Contemporary Fataawa

by

JUSTICE MUFTI MUHAMMAD TAQI USMANI

Compiled & Edited by

MAHOMED SHOAIB OMAR

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Foreword (i)

THE ROLE OF *FATWÂ* AS AN INSTRUMENT FOR THE DYNAMIC APPLICATION OF THE *SHARÎAH*

Fatwâ is a *Sharî'ah* opinion expressed by a suitably qualified and competent scholar, who has been properly trained, expressed as an answer to a set of facts presented to him. It is accordingly different from a judgement of a *qâdi* who is involved in an adjudicative process, according to the rules of evidence, and ultimately gives a reasoned judgement after hearing all the parties to a dispute.

Fatwâ nevertheless, is an extremely important tool of problem-solving, in modern times. The role of *Fatwâ* has become critical at two levels having regard to new situations and changed circumstances, sometimes not foreseen or faced by the classical Muslim jurists.

Firstly, in solving a problem which did not specifically arise in earlier times, but in the situation where considerable assistance may be derived from the writings of the classical jurists. For example, the protection of intellectual property (e.g. trademark, copyright, patent, goodwill, etc) is a modern-day phenomenon and is regulated by the statutory law of almost every country. In seeking an answer to the problem of protection of intellectual property, the true *muftî* would examine how the classical jurists had defined the concept of property, and whether the definition was broad enough to encompass "intellectual property". In this examination and anaylsis the *muftî* would examine and analyse all the writings of the recognised and accepted jurists of all the recoginsed schools of interpretation *(madhâhib)*. In this process the *muftî* would apply the principles elucidated by the classical jurists to the problem at hand. For example, as regards intellectual property as deserving of recognition and protection in the Sharî'ah experts have drawn heavily on the great and incisive writings of the classical jurists. For instance, they have applied the following definition of property given by the celebrated Syrian jurist Ibn Âbidîn in his famous work *Radd al Mukhtâr:*

إنَّ لِلعُرْفِ مَجَالاً فِي إِدْرَاجِ بَعْضَ الحُقُوقِ فِي الأَمْوَالِ فَإِنَّ المَالِيَّة تُثْبِتُ بِتَمَوِيلِ النَّاس

Customs and Usage has scope in fixing certain rights to property. The characteristics of property are established through the usage of people.

بحوث في قضايا فقهية معاصرة –١١٦

محمد تقي العثماني

At this level, therefore, the muftî analyses the writings of the classical jurists, identifies the correct principles, and applies those principles to the set of facts

presented to him. In this way the *Sharî'ah* is applied to new situations, not faced by previous societies, in a manner which eliminates hardship and facilitates ease and convenience.

The second level of analysis which is crucial to the application of *Sharî'ah* to new situations and circumstances, deals with the case where there is no precedent in the writings of the classical jurists. This is an extremely complex matter, and the *muftî* must be a scholar of great learning, if he were to attempt to solve the problem at hand. In this case the *muftî* is forced to have regard to general principles of the *Qur'ân* and *Sunnah* which are relevant to the factual situation before him because he cannot derive any direct assistance from the writings of the classical jurists. In this situation, the *muftî* would normally submit his arguments and conclusions to other *Sharî'ah* experts, with a view to arriving at a consensus opinion, having regard to the complexity of the matter and in accordance with the *hadith:*

تَشَاوَرِ العُلَمَاءُ وَالعَابِدِيْنَ وَلَا تَمْضِ فِيْهَا رَأْيٌ خَاصٌ

Consult with the scholars and the pious and do not rely on the opinion of an individual.

مجمع الزوائد

This process may involve a degree of *ijtihâd*, hence the imperative need for proper consultation with other *Sharî'ah* experts to avoid falling into manifest error and thereby causing confusion in the minds of the public.

What I have stated above, as regards the dynamic application of *Sharî'ah,* obviously only applies to those cases where there is no express, unambiguous, binding and absolute text of the *Qur'ân.* In the absence of such an absolute text, the *Sharî'ah* is a dynamic system of Divine Law, based inherently on the principles of equity and justice, which can be applied to new and changing circumstances in accordance with the well known juristic principle:

الأَحْكَامُ تَتَغَيَّرُ بِتَغَيُّرِ الزَّمَانِ

For this reason the true muftî not only enjoys a deep and intuitive understanding of Sharî'ah, but also understands his society, and is aware of current developments on an ongoing basis. The role of the true muftî is foundational to the development of Muslim society itself, because he constantly seeks to find positive solutions, within the parameters of Sharî'ah in a way which encourages development and progress at all levels of society. In short, the true muftî works from the premise that the Sharî'ah has the solution to the problem and provides a suitable alternative where necessary. He therefore uses his acumen, intuition and abilities to solve problems in a just and equitable manner.

MAHOMED SHOAIB OMAR

1

Foreword (ii)

In the recent past, I have answered questions in english on various aspects of shariah. Some of these questions were posed by the readers of the monthly journal known as ALBALAGH INTERNATIONAL published in english by DARUL ULOOM, KARACHI. The questions and answers have been compiled and arranged under relevant chapters in the form of this book, by my learned brother, MAHOMED SHOAIB OMAR. He has been meticulous in reproducing the answers in their original literary form (for fear of altering the meaning in any way) but, at the same time, the learned editor has written, for the benefit of the readers, explanatory footnotes which elucidate certain answers, for which I am grateful. In the introduction, the learned editor has briefly explained the meaning of a FATWA, and the basic principles which should be followed by a person (suitably qualified) issuing a FATWA, which I trust will prove useful as a guide.

I sincerely hope that this book, which encompasses the rulings of shariah on important contemporary issues, especially in the field of economics, will be a source of easy reference and guidance for english-speaking Muslims, in particular. Furthermore, I hope that this compilation will act as a catalyst for the raising of further issues with a view to their solution from the Islamic perspective. May ALMIGHTY ALLAH accept the noble efforts of my learned brother, MAHOMED SHOAIB OMAR, and render the work beneficial - AMEN

JUSTICE MUFTI MUHAMMED TAQI USMANI
DARUL ULOOM, KARACHI
APRIL 1999

2

Introduction

Page

1.

THE ISLAMIC MESSAGE - *M. S. Omar*

Islam means to surrender absolutely to the Divine Will, as manifested and expressed in the Holy Qur'an and the Prophetic life - model known as the Sunnah.

This absolute surrender to the Divine Will in all possible life - experiences, and in all facets of life, is based on a fundamental premise : Allah, whose essence and attributes are perfect, and who is the source of all good, represents absolute Wisdom. Allah is therefore the supreme Legislator. Allah (whose essence and attributes cannot be fully perceived by man) has prescribed through the Holy Qur'an and Prophetic life-model ("Sunnah"), a comprehensive and all - encompassing code of life to enable man to recognize and perceive his Creator, and to enable man to follow the Divine Will.

The true test is the recognition of Allah in the unity of his essence, and in the perfection of his essence and attributes, and as the true cause of all actions and omissions, which flow from His absolute Wisdom.

Allah, in his infinite Wisdom, and to enable man to undergo this true test, has endowed man with the special inner cognitive capacity known as the soul which directly connects the human being to his Creator. The soul is exposed, at the same time, to the inner impulse to do good or bad, and here lies the true test : the person who resists and controls the inner impulse to do bad, and at the same time, acts on the impulse to do good, has passed the test : his or her soul is like a mirror which reflects the Divine Light,and which has truly become connected with his or her Creator. That soul, purified of the lower bad qualities, both inner and outer, has truly recognised Allah.

This world is but a means for the soul's onward time-less journey into the hereafter where it will return to its Lord and Creator.

Once it is accepted that Allah is the supreme Legislator, because He is Absolute Wisdom, then, the human intellect is His gift : it must be used productively for the benefit of mankind, but, at the same time, the intellect, in weighing benefits and harm, must surrender to the Divine Will as

manifested in the Holy Qur'an and the Prophetic life-model.

The essence of the Islamic teaching is that all the Divine commands and prohibitions are based on benefits to the individual and to society. What appears to be outwardly harmful ("SHARR") to an individual is, on closer analysis, beneficial to society as a whole. Hence, capital punishment for murder, although harmful to the perpetrator, is beneficial to society in protecting and preserving it, and in preventing it from descending into chaos. Similarly, the prohibition against drinking alcoholic beverages is directed at protecting a greater societal interest, as opposed to individual benefit in the form, for example, of commercial gain through trade therein. Allah alone, Absolutely Wise, and Absolutely free of limitations and needs, and Absolutely Merciful and Compassionate, decides for man what is truly beneficial and what is truly harmful. In weighing benefits and harm, Allah is the ultimate arbitor as to whether the social interest, in a specific case, outweighs the individual benefit.

Because Allah is perfect in His essence and attributes, He alone is the true Giver and source of all the bounties and blessings in every form, and He alone fulfills, and has the capacity to fulfill, all the needs of creation (whether humankind, animals, plants or otherwise). The logical corollary of this, is that Allah alone is worthy of worship. ("Ibadah")

The Ibadah, which is an aggregate of duties and responsibilities, ordained by Allah, are simply means to achieve the Pleasure of Allah, and are not ends in themselves. Man's status, in his relationship with Allah, is that of a slave whose only function is to obey the divine commands (the "faraid") as embodied in the Holy Qur'an and Sunnah, in absolute humility and absolute submission.

The true question for a Muslim, therefore, is : What is the Ibadah that is required of him at a particular point in time? The Ibadah, as the great scholar Ibn Qayyim states, in his well-known work, Madaarigh-Us-Saalikeen, constantly changes from one point in time to another, based on the demands of the time. In other words, the Ibadah has priorities, and it is the function of the individual to identify the Ibadah that Allah requires of him or her at a particular point in time, and discharge that Ibadah exclusively for the Pleasure of Allah. For example, a companion came to the Holy Prophet (S.A.W.) and sought his permission to participate in Jihad, the highest level of self sacrifice. In response, the Holy Prophet (S.A.W.) instructed him, instead of participating in Jihad, to return and serve his aged parents, because his Ibadah, at that point in time, was to devote his time in the

service of his parents who required his affection and care. Ibadah, viewed in this way, will establish a true connection with Allah.

At the same time, the individual is enjoined to constantly seek the Tawfiq of Allah to discharge the Ibadah itself. Tawfiq, which is the mainspring of Ibadah, comes from Allah only. Hence, we are instructed in the Surah Al Fatihah, "Thee alone we worship, and thee alone, we seek help". Without such Divine assistance, no individual would be able to discharge the Ibadah required of him in all fields of human activity.

The individual must also understand that his deeds alone are not sufficient for attaining the Divine Pleasure. Whilst the good deeds are necessary means to attain the Divine Pleasure, the ultimate acceptability thereof before Allah is based on His mercy and Fadl, as appears from the Holy Qur'an and the Hadis.

Finally, the great jurist, Imam Muhammad (R.A.), the student of Imam Abu Hanifah, has summarized the Islamic teachings by reference to four cardinal principles. He states that a person can reach the highest levels of earthly excellence, without restriction, if he or she adheres to the following :

1. Abstention from the major transgressions, whether flowing from the physical limbs, or the inner self.

2. The fulfilment of the fard obligations, the constancy in their fulfilment, at their appointed times.

3. Abstention from all sources of haram acquisition and illegitimate economic gains.

4. Abstention from oppression in any form, whether against a Muslim or non-Muslim.

see : Kitab-ul-Kasb (concluding portion)

Finally, the scholars have emphasized that the discharge of the Faraaid (the fard obligations) must always assume priority over the Nawaafil. The Faraaid are the capital of a business, the Nawaafil being the profits. As the great companion Abu Bakr (R.A.) advised the great companion Umar (R.A.), the Nawaafil will not be accepted until the Faraaid are first discharged.

M. S. Omar
31/12/98

2

THE PRINCIPLES OF FATWA

Compiled and Written By M.S Omar based on the Arabic Lecture Notes Of Justice Mufti Mohammad Taqi Usmani attended by the Writer

The Meaning Of Fatwa

In its original linguistic sense, the word Fatwa means an answer to a question irrespective of whether such question relates to an issue of Shariah or not.Thereafter, the word acquired a technical meaning in the sense that it was confined to an answer given in response to a question relating to an issue of Shariah or the Deen.

The Salaf & the Immense Responsibility of Fatwa

The Salaf used to exercise great caution in matters of Fatwa. Imaam Hanbal [R.A.] used to frequently say : “I don’t know”.Imaam Malik is reported to have said that the Mufti must be conscious of accountability to Allah before responding to any question. According to Ibn Masud and Ibn Abbas, a person who answers every question is mad. Unfortunately there are many persons who claim the mantle of issuing Fatwa without proper training and without having acquired the necessary expertise, thereby causing confusion and misunderstanding amongst the lay public.

1. The First Principle – Expert Supervision to Acquire Expertise

It is not permissible to issue a Fatwa unless a person has studied fiqh in depth under the supervision and guidance of competent experts in the field. The classical literature of Islamic Law has its own style and terminology and requires careful analysis in context. For example, what appears to be an unqualified statement is limited in application by the context or by conditions referred to elsewhere in juristic literature. An expert jurist would point to the true meaning and purpose of a juristic text and its proper application to a factual situation, thereby avoiding the errors resulting from selfstudy or lack of guidance. A true perception can only be achieved under constant guidance, tutelage and supervision of distinguished experts recognised in the field.

2. The Second Principle -Development of Aptitude and Perception

A person is not permitted to issue a Fatwa until and unless he develops an aptitude and a deep perception which enables him or her to distinguish between basic principles and their causes. The required level of aptitude and perception is attained when he or she is permitted by an expert to undertake the delicate and highly responsible trust of issuing Fatwa.

3. The Third Principle – Single Juristic View Binding

If there is only one juristic view on a question amongst all the Hanafi jurists, then, that view is binding, unless there is cogent, textual evidence to the effect that such a view is based on an underlying cause which is absent in the particular case.

4.The Fourth Principle – Multiple Juristic Views

If there is more than one juristic view on a particular question, then it is obligatory to adopt that view which has been preferred by the scholars of Tarjeah [those classical jurists who have achieved distinction in the field by reason of their deep learning, piety and capacity to distinguish between competing arguments having regard to ever changing circumstances and new situations].

5. The Fifth Principle – Reliance upon Authentic Juristic Works Only

The Mufti is obliged to rely exclusively on the recognised and authentic works of Islamic Law. He is precluded from relying upon a work, which is not recognised, unless such reference is in accordance with established principles. In any event, he cannot base his reference upon a classical jurist who is not recorded to be amongst the preferred classical jurists of distinction [Ashab-ul-Tarjea]. It is imperative that the Mufti is able to distinguish between the works upon which reliance can be properly placed, and those which cannot be relied upon for various reasons including weak narrations.

6. The Sixth Principle – Priority to be given to the Preferred view as expressed in the text

In the case where there is a difference of opinion amongst the classical jurists on a particular question, that view is selected which has been

accorded express preference in the text by the use of clear and express words such as "The Fatwa accords with this view".In the absence of express, clear reference in the text to the most preferred view, the particular text and juristic work must be examined with reference to context to determine the authors preference for a particular viewpoint.

7. The Seventh Principle – Specific Words used to indicate Preference

The preferred jurists of distinction [Ashab-ul-Tarjea], in selecting the most preferred viewpoint, have used different words in the text to denote such preference. Certain words indicate a stronger degree of preference than others, as appears from various references.

8. The Eighth Principle - Conflict of Juristic Opinion

In the case of a conflict between competing juristic views, it is an extremely delicate and complex task to prefer one view over another. A number of guidelines have been laid down but ultimatety the selection of the appropriate rule is based on the aptitude, skills, intuition, depth of learning of the particular Mufti having regard to divine accountability and sincerity of purpose, devoid of ulterior motives.

9. The Ninth principle – Adopting the View of Zahir-ul-Riwayah

In the event where the classical jurists of distinction [Ashab-ul-Tarjee] have not preferred any view at all, then it is obligatory to adopt the view expressed by the *Zahir-ul-Riwaayah.* If the latter itself expresses a difference of opinion, then the most recent view [ie. the latest] should be adopted.

10. The Tenth Principle – Mafhum-Mukalif as a Principle of Interpretation of Juristic Text

Mafhum-Mukalif refers to the case where the contrary intent is inferred from the ordinary meaning of an expression. For example, The Holy Prophet [S.A.W.] said that zakah is payable in respect of camels that graze on their own. The contrary meaning [Mafhum-Mukalif] is that no zakah is payable on domesticated camels. The Mafhum-Mukalif is an acceptable principle of interpreting juristic text provided that the context permits such an interpretation.

11. The Eleventh Principle – Weak Juristic Narrations Not to be Adopted

As a general rule, it is not permissible to issue a fatwa which is based on a weak narration except in the case of necessity as interpreted by an extremely competent Mufti having a deep insight, perception, intuition, skills and having the capacity to distinguish between different arguments based on their strengths and weaknesses.

NOTE:

The aforegoing purports to be a brief summary. It is apparent that the subject is complex. It is permissible in the case of genuine need to adopt the rule of another mazhab in solving a problem, but identifying genuine need in the correct factual context is the function of an eminent jurist who has the requisite expertise.

EDITOR

3

Salah

1

THE LANGUAGE OF THE KHUTBAH OF JUM'AH

Q *"Is it necessary that the Khutbah of Jum'ah is given in Arabic language or can it be given in some other language also. Some people say that if it is given in a local language it may be more useful to the audience.".*

(Shabbir Ali, Toronto)

A The Khutbah of Jum'ah is not essentially a lecture meant for the people. Rather, it is a part of the prayer of *jum'ah.* It is evident that the numbers of *rak'at* in a *zuhr* prayer is four. On the day of *jum'ah,* the number of raka'at has been reduced to two only, and the remaining two *rak'ats* have been substituted by a *khutbah,* which is basically a form of *dhikr* (ritual recitation of Allah's name), and by this name it has been referred to in the Holy Qur'an (Surah *al'jum'ah).* Therefore, being a part of the prayer of *dhikr,* it can only be performed in Arabic, and just as the prayer of jum'ah cannot be performed in a local language, the *khutbah* cannot be given in any language other than Arabic. The companions of the Holy Prophet (S.A.W) went to a number of places outside Arabia and preached Islam there, but they never used a local language while offering a *khutbah* of *jum'ah.* They used the local language in other lectures and sermons, but not in the prescribed *khutbah* on Friday. This helps the Muslims being in at least verbal contact with Arabic, the language of the Holy Qur'an and Sunnah.

2

WHEN A PERSON IS DOUBTFUL ON HOW MANY RAK'AT HE HAS PERFORMED

Q *"It frequently happens during namaz (salah) that I forget the correct number of rak'at I have performed. For example, I get confused during the salah whether I have performed two rak'ats or three rak'ats. Normally in such a situation I repeat my prayer all over again. Is this what we are supposed to do or is there any other solution to this problem? Please enlighten me in this respect."*

(Maleeha Siddiqi, Karachi)

A You need not repeat the prayer every time you face such a situation. If a person has experienced this confusion for the first time, he or she is required to repeat the Salah. However, if this confusion occurs frequently, as in your case, you are not required to repeat the prayer.

Instead, whenever you are confused during your prayer, you should guess and should act according to the number which appears to you more probable. For example, if you are confused in the *zuhr* prayer whether you have performed two *rak'ats,* or three *rak'ats,* and after reflection it seems to you more probable that you have performed three *rak'ats,* you should act accordingly and after adding one more *rak'at,* your four *rak'at* will be deemed to have been complete.

But even after reflection, you cannot recollect the actual number of *rak'ats,* both possibilities are equal and you cannot prefer one of them over the other, then you should act according to the lesser number. For example, if you cannot recollect whether you have performed two *rak'ats* or three *rak'ats,* you should presume that you have prayed only two *rak'ats* and should add two more *rak'ats* to complete your zuhr prayer.

However, in this case (i.e. when acting according to the lesser number) one should sit for *tashahhud* after each *rak'at* which could possibly be his last *rak'at.* Therefore, in the above example, (when one is confused about two or three *rak'at,* and takes it to be his second *rak'at)* he should sit after his next *rak'at* and should recite *tashahhud,* because there is a possibility that it is his fourth and last *rak'at.* Then after reciting *tashahhud,* he should stand up and should complete the four *rak'at* according to his presumption, and should perform a *sajdah* of *sehw* in the last.

Take another example : Suppose, you are saying the prayer and get confused whether it is your first *rak'at* or the second one. Both possibilities are equal. Now you should take it as your first *rak'at.* Normally it means that you should not sit for *tashahhud* after *sajdah* but since there is a possibility that it is your second *rak'at* i.e. the last *rak'at* in the *fajr* prayer, you should sit after *sajdah* and after reciting *tashahhud* should you stand up again and perform another *rak'at* with a *sajdah* of *sehw at* its end.

In this manner, you can resolve the problem without repeating the prayer.

3

SOME QUESTIONS ABOUT THE PRAYER OF QUNOOT

Q *(a) "Why is du'a of qunoot prayed during the 'Isha' prayers (specially in the witr). There must be a reason behind it."*

(b) Since du'a qunoot is a du'a, can we use it to pray it in other

prayers i.e. after finishing Fajr prayer?

A The forms of worship are prescribed by Allah Almighty and have been conveyed to us through the Holy Prophet (S.A.W). No doubt, every form or method of worship so prescribed has some wisdom behind it, but that wisdom has not been expressly mentioned in the Holy Qur'an and Sunnah in every case. We can attribute certain reasons for certain acts, but it will be a hypothetical exercise which may or may not be correct, because the real wisdom is best known to Allah alone. The number of *rak'ats* in the *Fajr* prayer is two while it is four in *Zuhr, Asr* and *'Isha'* and three in *Maghrib.* The reason for these different numbers in different prayers is never mentioned in the Holy Sources of Islamic teachings. The recitals of prayer also vary from act to act. We are directed to recite the Qur'anic verses while standing in the prayer, but we have been forbidden from doing so in the states of *ruku'* and *sajdah,* likewise, *Tashahhud* has been prescribed in the *qa'dah* (state of sitting) and not in the *ruku'* or *sajdah.* The exact reasons for these directions are not expressly mentioned in the Qur'an or in the Sunnah, because the essence of worship is nothing but to obey the divine commands and to follow the prophetic practices even if their reasons are unknown.

Similar is the case of the *du'a* of *qunoot.* It has been prescribed in the last *rak'at* of *witr* without giving any reason. Therefore, we must follow it even though its exact reason is not known to us.

One can say that since the prayer of *witr,* is the last prayer performed by a Muslim at night, a comprehensive *du'a* has been prescribed in its last *rak'at* so that one's daily activities may end with this prayer which encompasses all his needs, both in this world and in the Hereafter.

But, as mentioned earlier, this is only a possible reason. Some other person may adduce another reason, the real wisdom being known to Allah alone.

(b) Yes, there is no harm against reciting this *du'a* after prayers also. But it should not be recited during the *Salah* except in the *witr* prayer.

4

DETERMINING THE DIRECTION OF QIBLAH

Q *.1 Dear Moulana, your lecture on June 6, 1997 at MCA, increased our knowledge and* Iman. *May Allah give you great reward Ameen! I would like to thank you for visiting MCA Santa Clara.*

Dear Maulana, we need your Fatwa on the following three Fiqhi issues:

1) The time of Salah al-Zuhr (what is the beginning, the end of the Zuhr time and what is the definition of Zawal?)

2) The Qiblah's direction (Should the Qiblah be identified by the strict directions West, East, North and South only? Are other directions such as north-east and south-west also considered? Should the shortest direction to Makkah be considered as a reference to define Qiblah?)

3) The means to measure the Salah time and the direction of Qiblah (Is there any wrong in using Watches, Prayer Calendars and Compasses to identify Salah time and Qiblah's direction?)

Your fatwa attached with opinions of the four Mazhabs and Ijmah is highly appreciated.

A I received you faxed letter, with certain questions, the answers of which are given below:

1) The time of Zuhr prayer begins immediately after *Zawal, Zawal* means the decline of the sun towards the west during its daily orbit.

2) The Qiblah is not necessarily identified by the strict direction of west, east etc. but it can also be in the north-east or north-west according to the geographical position of each place. We should try to ascertain the exact direction of Qiblah, however, an approximate direction may also serve the purpose of *Salah* so much so that deviation from the exact direction of Qiblah upto 45 degree is held to be negligible which means that if somebody offers *Salah* to a direction which is within 45 degree from the exact direction of Qiblah, *Salah* will be acceptable.

3) There is no bar against using watches, compasses or calendars to identify *Salah* time and Qiblah's direction in so far as they are correctly designed, and accurate.

Q *.2 From the past few months, an issue of cloning arose and it becomes a matter of life and death for our daily life as either it is ethically right or wrong. I am sending a short note which is taken from different magazines and newspapers.*

Please, tell me what Islamic Shari'ah tells. If possible, explain through Quranic and Hadith verses. (Naumann Farooq)

A This issue has been thoroughly discussed in the recent session of the Islamic Fiqh Academy at Jeddah and it was unanimously decided that the Human cloning through physical cells is not acceptable in the Shari'ah. However, this process can be availed of in agriculture and animals.

Q .3 I shall be much obliged if you please provide me answers in the light of Holy Qur'an and Sunnah in respect of some very important matters for the following:

1. In non-Muslim (Kafir) countries of Australia, Canada, Europe, America etc. millions of Muslims from Middle East, Asia etc. started living as immigrants after the second world war. These new arrivals - Muslims - had no independent cemetery (graveyard) of their own in these continents and hence they were allowed to bury (by using a small portion of land) in Christian Cemeteries. I read a Hadith in a Muslim magazine (published in Surat-India) Al-Islah that our Holy Prophet (S.A.W) saw two persons talking on the road in front of a Nasara cemetery; he advised the two Muslims to go away 50 yards - quickly and also told that the dead men in non-Muslim cemeteries are under severe punishment for the sins by Allah (S.N.A.T) and we should avoid going into Kuffars (Nasaras etc.) cemteries - we should not ever go near such cemeteries."

As per above reference Hadith, I would like to request you to provide the true Islamic point of view for the guidance of millions of Muslims living in America - Canada, Europe etc.

2) If a Muslim's friend and/or relative, who is a Non-Muslim ((Hindu, Sikh, Yahood, Nasara, Ahmadi Quadiani, Lahori) Parsi, Bahai, all known Kafirs Mushriqs etc.) dies is a Muslim allowed to participate to attend funeral services, to go to church service, to go to cemetery or attend cremation, during burial time, to take part in the prayer - service to make 'dua' for the dead man / woman, to put flower-chaddar (or flower bouquets) etc.

As per question No.1 above: (1) Is a Muslim forbidden or allowed such funeral participation? (2) Is it allowed to put or spread flowers and send expensive flower bouquets - a forbidden practice - wastage, which is forbidden in Islam?

3) Is it allowed in Islam: (i) to shake-hands and embrace and Kiss the forehead, cheeks/by a man to woman to each other who are friends, relatives - close or distant relatives (Mahram or Na-Mahram), even

stranger.

(ii) Is it allowed to kiss hands of each other - (man and woman)?

(iii) Is it allowed to touch and kiss the legs of a saint, old man, Imam, and scholar of Islam as done (by Hindus) and Bangali Muslims too.

(iv) Is it allowed salutation by folded-hands by saying Namaste - A Hindu practice of 'Salaam'.

If all these practices (traditions) are not allowed in Islam (forbidden), please let us know whether any punishment or sin is committed by such Muslim?

4) Whether a woman's Hajj or Umra is permitted without accompanying permissible man-relative when that woman has no such man relative available? What is the remedy for such a woman to perform Hajj or Umra?

5) Please let us know if the Eid Kurbani-sacrifice of an animal is wajib (essential) to sacrifice for each and every Muslim of any age, even without going for Hajj?

6) Many people go to Hajj and Umra every year (frequently), is it necessary to do more than one Hajj? If someone is rich person, can he send other poor people to perform Hajj instead of the rich man going every year? Is it allowed Haj at the expense of Govt. of Pakistan or Govt. of other countries?

7) Are Muslim women allowed to go to the cemetery along with other Muslim men/women to attend Janaza prayer, offer Fatihah and offer flower - bouquets and spread flowers on the grave and put oil lamp on the head of the grave?

Is it allowed under Islam to erect cement walls around the grave and put name-plate made of marble and photo graphs of dead man or woman? Are these practices forbidden under unnecessary waste of money?

(The above practices are very widely followed by Pakistani, Turkish and Bosnian Muslims, which please note.)

I request you send your reply in English preferably a typed one on your letter-head with your seal and signature.

(M.S. Mohammady, London)

A 1) It is not permissible for Muslims living in non-Muslim countries to bury their dead in the cemeteries of non-Muslims. However, if the Muslims do not have any cemetary of their own, then it is permissible for

them to bury their dead in a non-Muslim cemetery. In such a situation, every effort should be made to secure a portion of the cemetery specially for Muslims that they may bury their dead together.

With regards to the *Hadith* mentioned in the question any comment regarding that particular *Hadith* can only be made if the original text is presented.

فى بحوث فى قضايات فقهية معاصرة: (لا يجوز دفن موتى
المسلمين فى مقابر غير المسلمين الا اذا لم يكن من لالآي بد) وذلك
بان لا يكون للمسلمين مقبرة، ولا يسمح لهم بالدفن خارج مقبرة
الكفار، يـن ُيلا يجوز ذلك للضرورة (ص ٣٢٢).

2) It is not permissible for a Muslim to attend the funeral services of a non-Muslim, to go to the Church service, attend cremation, or to take part in the prayer-service. Likewise, *Fatiha,* or making 'dua' for a non-Muslim is also forbidden. The placing of a flower Sheet on a grave is not permissible for a Muslim (grave) let alone a non-Muslim as it is an innovation and also a practice of the Hindus. Likewise, the placing of bouquets of flowers is also forbidden for Muslims as well, as it is an unnecessary extravagance.

قال تعالى: فلا تقعد بعد الذكرى مع القوم الظا لمين (الا نعام)
وقال تعالى: ولا تركنوا الى الذين ظلموا فتمسكم النار ومالكم من
دون الله من أولياء (هود)
وقال تعالى: ما كان للنبى والذين امنوا أن يستغفروا للمشر كين
ولو كانوا أولى قربى من بعد ما تبين لهم أنهم أصحاب لإُيولآه

3) All forms of physical contact between a Balig (major) male and female who do not hold the status of husband and wife should be strictly avoided. In the case of a non-mahram, it is Haram for a man and woman to have any physical contact. Therefore, shaking hands, embracing, kissing the forehead etc in such a situation is *Haram.* However if either party is of a very tender age who do not hold any sexual attraction, or the woman is of such an old age that she no longer holds any sexual attraction, then in such a situation shaking hands is permissible. It is also permissible to kiss the child of very tender age who does not hold any sexual attraction.

In the case of a *mahram,* when both parties have reached puberty, although it is not a sin to embrace , shake hands and kiss the forehead etc. as long as either party does not harbour any sexual desire, it is best

avoided. However, if either party harbours any sexual desire, or a certain amount of doubt exists that such is the case, then any physical contact is *Haram.*

In all of the above, one who has reached near puberty is also regarded as having reached puberty. Therefore, the same rule will apply.

في الهندية : وأما النظر ألى الأ جنبيات ... ولا يحل له أن يمس
وجهها ولا كفها وأن كان يامن الشهوة وهذا أذا كانت شابة تشتهي
فان كانت لا تشتهي لا بأس بمصافحتها ومس يدها كذا في الذخيرة
(ص ٣٢٩)

(ii) For a *non-mahram,* kissing the hands of the opposite sex is *Haram.* The same rule applies for a *mahram* when there is a doubt that either party may harbour sexual desire. If no such doubt exists, it is permissible to kiss the hands, but even then caution should be exercised.

في الدر: ... وما حل نظره مما مر من ذكر أو أنثى حل لمسه ألى
قوله وأن لم يامن ذلك أو شك فلا يحل له النظر والمس (جلد ٦ ص
٣٦٧)

(iii) It is permissible to touch and kiss the legs of an elder, Imam, scholar etc. out of respect for his piety or his knowledge of *Deen* as long as it does not resemble prostration. However, this is a practice best avoided as it may lead to corruption of belief as well as pride on the part of the one whose legs are being touched and kissed.

في الدر: (طاب من عالم أو زاهد أن) يدفع أليه قدمه و.(يمكنه
من قدمه ليقبله أجابه وقيل لا) ير خص فيه.
وفي الشامية: (قوله أجابه) لما أخرجه الحاكم: أن رجلا أتى النبي
صلى الله عايه وسلم فقال، يا رسول الله أرني شيأ أزداد به يقينا
فقال «اذهب ألى تلك الشجرة فادعها فذهب أليها فقال: أن رسول
الله صلى الله ﷺ وسلم يدعوك فجاءت حتى سلمت على النبي
صلى الله عليه وسلم فقال لها : ارجعي فرجعت قال:ثم أذن له
فقبل رأسه ورجليه وقال لوكنت أمرا أن يسجد لأ حد لأ مرت
المرأة أن تسجد لزوجها » وقال صحيح الا سناد من رسالة الشر نبلا لي
(جلد ٦ص ٣٨٣)

(iv) It is not permissible to adopt the Hindu practice of greeting mentioned. The Holy Prophet (S.A.W) has forbidden the copying of other cultures. In fact, it is a right of a Muslim to be greeted with Salaam at the time of meeting.

4) It is not permissible for a woman, when she has to travel 48 miles or more, to perform *Hajj* or *Umrah* without an accompanying permissible *mahram.* In such a case, when Hajj has also become compulsory on her and she fails to perform it in her lifetime, it is necessary for her to appoint someone to perform *Hajj* on her behalf after she dies.

5) The performance of Hajj is not a prerequisite in order for the *Qurbani* to become *wajib.* For *Qurbani* to become *wajib,* the prerequisites are that one should be a Muslim and a *Muqim* (resident). One should also have ownership of 612.35 grams silver or 87.479 grams of Gold or any of their equivalent in wealth that is in excess of one's basic necessities and free from any financial claim. Reaching the age of puberty is not a condition. Therefore, if the above mentioned conditions are present, the parents or guardian of a minor should offer *Qurbani* on behalf of the minor from the minor's wealth.

6) It is not necessary to perform more than one Hajj. After performing the *Fard Hajj,* it is permissible to send other poor people instead of going oneself every year. It is also permissible to go for Hajj at the expense of the government, provided that it is within legal right.

7) It is not permissible for women to accompany men to the cemetary for burial and to offer *Janazah* prayer and *Fatiha.* It is also not permissible for a man or woman to place bouquets of flowers on the grave or to put oil lamps at the head of the grave. Likewise, it is forbidden to erect a tomb over the grave and also to place photos (which are Forbidden in themselves) of the dead person at the grave. However, when there is a need to safeguard the grave from being trampled and disrespected, the erection of a boundary and marble name-plate is permissible.

5

MEANING OF DHIKR

Q *A non-Muslim studying Islamics at a university is writing a project on the Tablighi Jamaat. Since I got to know him because of this, he frequently asks a thing or two concerning his project. One question is this:*

"As far as I know "Dhikr" is not used in the Tablighi Jamaat in the same sense as Sufis use it, who use it often for mystical and spiritual

exercises to attain a state of ecstasy. What is meant by "Dhikr" in Tablighi Jamaat and what is the difference between "Dhikr" and the prayer (Salah)?"

The latter part of the question specially is beyond me. Could you give me an answer as quick as possible?

A *Dhikr* is a special type of Islamic worship which means remembrance of Allah Almighty. Although rememberance is an act of heart, yet the recitation of some words or sentences glorifying the names of Allah is also a part of *Dhikr* because such recitations may ultimately inculcate an inner state of perpetual rememberance of Allah. It is totally erroneous to presume that the Sufis undertake *Dhikr* to attain a state of ecstasy. In fact any kind of ecstasy is not an objective of any Islamic worship, rather the acts of worship on their own are commendable because they demonstrate one's total submission to the commands of Allah Almighty. Whether or not a state of ecstasy is attained has no importance with regard to *Dhikr* or any other type of worship.

The true Sufis as well as other Muslim scholars undertake *Dhikr* only to demonstrate their submission to Allah and not to create ecstasy. Those who claim that the basic purpose of *Dhikr* is to attain ecstacy are either ignorant of the true teachings of Islam or have a confusion about it, because they cannot fortify such a notion with any statement in the Holy Qur'an or in the *Sunnah* of the Holy Prophet (S.A.W).

As for the difference between *Dhikr* and prayer, it can be summarized by saying that *Dhikr* is a general rememberance of Allah while prayer in the meaning of *Salah* is a particular type of worship, and in the meaning of supplication is to put one's request before *Allah Subhanahu Wa Ta'ala*, and both of these are specific kinds of *Dhikr*.

Q *I have been in the practice of making 4 Rak'at with one Taslim, I ask if I forget to recite the Thana at the beginning of the third Raka'at and start the recitation of Surah Fatihah and then remember, can I stop reciting the Surah and recite the Thana and then recite the Surah? Or should I just make Sujudu-Sahw?*

2. Again concerning the making of 4 Raka'at with one Taslim,.In the first two Raka'at I recite Surah 111 and 112 is it permissible for me now to recite 94 and 95 in the 3rd and 4th raka'at since these are considered two new raka'at?

3. If one does not remember how many Sajdah he has made and

makes another not knowing whether it is the second or third should he make Sujudus-Sahw or start the Salat afresh?

4. It is reported in Shamaa'il Tirmidhi Hadith (294) that the Sahabi 'Abdullah ibn 'Amr ibn 'Aas (R.A) made up his mind that he would strive to intensify his devotions, and he did such by fasting each day and praying all night. His father became upset about this and went to Sayyidna Rasullalah (S.A.W) and complained. Sayyidna Rasullalah (S.A.W) called 'Abdullah and asked him : "I have heard you always fast during the day, and stand in prayer the whole night?" He replied: "Yes" thereupon Sayiddna Rasullalah replied, "Do not do so, but fast sometimes, and abstain sometimes. In the same manner do perform salat at night, and sleep too." Can you explain what is meant by this underlined portion please.

5. Would it be Makruh to delay the Maghrib Salat till the stars begin to twinkle?

6. During the time of the Sayiddna Rasullalah (S.A.W) was the urine of camels considered to be pure or impure? I ask this question from a hadith in Sahih Bukhari and Sahih Muslim, where a tribe was ordered by the Sayiddna Rasullalah (S.A.W) to drink urine and milk to cure a ailment that they suffered from. But in these days the kutub says that the urine is najas.

7. If one stood up and realized that he had only made one sajdah what should he do?

8. In what direction should one pray in from the United States, more specifically Ohio?

9. Is Jumu'ah Salat valid in prison? If so could you provide me with the dalil on this? *(Abdul Hakiym Zakiy {U.S.A.})*

A 1) When you are praying four Raka'ats with one Tasleem you need not at all recite Thana in the beginning of the third Raka'at. Therefore, there is no question of any Sujoodus Sahw for not reciting *Thana.* Even in the first Raka'at it is not *Wajib* to recite *Thana.* Therefore, if some one missed to recite it he need not make any *Sajdah* of *Sahw.*

2) If you have recited Surah No. 111 and 112 in the first two Raka'ats you should not recite Surah No. 94 or 95 in the last two Raka'ats, because it is advisable to recite the Surahs of the Holy Qura'n in the existing order of compilation. When you are performing four Raka'at with one *Thasleem,* the second couple of Raka'ats is not a new *Salah* in this respect.

3) If one does not remember how many *Sajdahs* he has made, he

should try to recall the exact situation and act according to the most probable possibility according to his own guess. However, if he is unable to guess, both sides being equal, in that case he should perform another *Sajdah* and he need not make a *Sajdah of Sahw.*

4) The meaning of the *Hadith* is more than clear. The Holy Prophet (S.A.W) has emphasized on the fact that Islam has enjoined upon a Muslim certain obligations and all of them should be fulfilled by him simultaneously. It is not right to concentrate on one aspect only and ignore all others. If some one fasts the whole year and stands up in prayer the whole night, it is evident that he is not fulfilling the obligations towards his wife and children. It is specifically mentioned in the said event about Sayyidna Abdullah ibn Amr (R.A) that on a query made by the Holy Prophet (S.A.W) from his wife, she told him that her husband does not spare any time for her. It is in this context that the Holy Prophet (S.A.W) stopped him from this practice and drew his attention towards fulfilling all obligations, including the obligations towards his wife, children and other individuals of the community.

5) Yes, it is *makrooh* to delay the *Maghrib* prayer till the stars begin to twinkle.

6) According to the Hanafi and Shafi'i schools the urine of camels is impure. In the event stated by you some members of a particular tribe were advised by the Holy Prophet (S.A.W) to use the urine and milk of camels as a medication. It is not a general principle to allow drinking of urine or taking it as pure.

7) In this case he should go back to perform the missed *Sajdah* and should make *Sujoodus Sahw* at the end.

8) The direction of Qiblah from U.S. is to the south-east, However, you may verify the correct direction from the Islamic centres in your own city.

9) The answer to this question depends on certain clarifications; for example, is the prison in a city or is it situated outside the city, how many Muslim people are there in the prison, is the Jum'ah prayer offered somewhere outside the prison, and is there any restrictions from the prison authorities to offer prayers in the prison. Until you come back to me with the answers to these questions you should not perform the Jum'ah prayer. Rather, you should perform the *Zuhr* prayer.

6

RELOCATION AND THE QASR SALAH

Q Family 'A' (father, mother and 2 major married sons) had lived permanently in Durban. The members of the family were born in Durban. They had grown up in Durban and had always regarded Durban as their permanent home. About 8 years ago, family 'A' moved to Ladysmith, a town about 150 miles away from Durban. They settled in Ladysmith primarily for business reasons - they had relocated their manufacturing plant from Durban to Ladysmith in order to take advantage of certain Government benefits and concessions arising out of such relocation of their business. The family still owns a home and other property in Durban and still runs an Office in Durban. The third son is residing in Durban with his family and the brothers and sisters of the parents and their respective family units all reside permanently in Durban. Family 'A' wants to know:

a) Whether or not Family 'A' should perform QASR SALAH or full salah in Durban;

b) Whether or not family 'A' should perform full salah or QASR SALAH in Ladysmith. (M.S. Umar, Durban)

A If the family 'A' has gone to Ladysmith with the intention to settle there for good and has no intention to come back to Durban as its permanent residing place, its wattan has shifted from Durban to Ladysmith and he will perform the full *Salah* in Ladysmith while he will enjoy the concession of *Qasr Salah* whenever he travels to Durban for less than 14 days. If he has left one of his sons living in Durban with his family, it makes no difference in this case, nor can permanent residing of his uncles or nephews in Durban disturb this position. However, if the family 'A' has gone to Ladysmith only to carry on its business with no intention to settle there for ever, then his *watan* has not shifted from Durban and all the family members will have to perform full *salah* in Durban whenever they go there. One can also have two *watans* simultaneously but it is a situation where one has some of his dependent family members in one place and some of them in another, and in both the places he has his own house to live and holds each of the two places as his permanent residing place, living in each of them alternatively. In this situation both the places are his *watan* and he has to perform full *salah* in each of the two places. But in the situation mentioned in your question, if family 'A' has settled in Ladysmith for ever

with all its dependent family members, this principle will not be applicable, because they have not left any of their dependent members in Durban. The son who is residing in Durban with his family is not a dependent member of this family; therefore it does not make any difference.

7

METHOD OF JOINING PRAYERS

Q *If one joins the congregational prayer late (i.e. in 3rd or 4th rakah) what is the proper way to complete the prayer? In which rakah he has to recite a surah and in which rakah he has to sit after sajdah?*

(Abdul Sattar, Chicago)

A A person who has not joined a prayer in the first rakah is called a *'Masbuq'*. He has to complete his prayer after the Imam has finished his prayer. A *'Masbuq'* has to observe the following rules while completing his prayer:-

1. He should not make salam with his Imam; rather as soon as Imam completes his first *salam* he should stand up to complete his prayer.

2. By completing his own prayer, a *'Masbuq'* shall perform all the acts of prayers in the same manner as he has to perform while praying individually.

3. In the matter of recitation of surah he shall follow his own number of rakah i.e. if he has missed two *raka'h* with the Imam and has stood up to complete these remaining *raka'h*, he will have to recite surah in both of them because these *raka'h* will be deemed to be his first and second *raka'h* and his performance with the Imam will be deemed to be third and fourth. Likewise, if he has missed three *raka'h* and performed only one *raka'h* with the Imam, then while performing the remaining three *raka'h*, he will recite surah in the first two *raka'h* only and will not recite in the third.

4. However, in the matter of *Qa'dah* (sitting for *Tashahhud*), he will follow the number of raka'h he has actually performed whether with the Imam or on his own. Therefore, if he has missed three *raka'h* and has performed only one *raka'h* with the Imam, then he will have to sit for *Qa'dah* right in the first *raka'h* whike completing his own prayer, because this is actually his second *raka'h* as combined with the one performed with the Imam, and since *Qa'dah* is obligatory after every two *raka'h* he has to make *Qa'dah* right there and he will not sit in the next *raka'h* because it is

actually his third *raka'h.*

In the light of aforesaid rules, if a person has missed three *raka'h* and joined only in the fourth *raka'h* with the Imam, he will not follow the Imam in his salam and will stand up to complete his remaining three *raka'h* and in the first *raka'h* he will recite surah and after completing *sajdah* he will sit down to recite tashahhud, then he will rise up and will recite the surah again. He will not sit in this second individual *raka'h.* Then in the third, he will not recite a surah and will sit down after *sajdah* to complete his *Tashahhud* and *salam.*

I hope this will be enough to explain the way in which a 'Masbuq' has to complete his prayer.

8

CONGREGATIONAL PRAYER OF WOMEN

Q *Are women allowed to participate in congregational prayer led by a male? If it is allowed where they should stand? Similarly, is it allowed for women to arrange their own congregational prayer led by a female and participated by women exclusively? If it is allowed, what shall be the arrangement of the rows? Please also mention whether such type of congregational prayer can be held in the mosque or in the home. If it is possible for women to participate in a congregational prayer held in a mosque, how should a woman observe the injunctions relating to Hijab?*

(Muhammad Hassan Chand,Karachi)

A The Holy Prophet (S.A.W) has clarified in a number of *Ahadith* that it is not preferable for a woman to perform prayer outside her home. The congregational prayer has been intended for the male Muslims only and they are not only included to perform their prayers in a congregation but it has been made almost obligatory on them that they should perform the prayer in a mosque and should not abandon the congregational prayer except in a case of necessity. On the contrary, the females are always advised by the Holy Prophet (S.A.W) to perform their prayers in their homes so much so that the performance of prayer in an inner room has been made more rewardable for a woman than in the outside room, and performing the prayer in the outside room has been more rewardable for her than in a courtyard of her own house. However, in the days of the Holy Prophet (S.A.W) a large number of women used to come to the Mosque to perform prayer behind the Holy Prophet (S.A.W) - an unparalleled merit.

Since the women of those days used to observe all the requirements of Shari'ah including those of Hijab in the days of the Holy Prophet (S.A.W), they were not forbidden from attending the congregational prayers. However, the Holy Prophet (S.A.W) has made it clear that it is more advisable for them to pray in their homes.

But Sayyidna 'Umar (R.A) felt in his days that the concession given to the women is sometimes misused and it was apprehended that it would be misused in the future even more. He was also aware of the fact that the Holy Prophet (S.A.W) did not like the women leaving their homes for the sake of prayers. Keeping all this in view he issued a directive that the women should no longer attend the congregational prayer. This directive was completely confirmed by all the Companions of the Holy Prophet (S.A.W) available at that time. Sayyida Aisha (R.A) opined, that had the Holy Prophet (S.A.W) been alive in those days he would have certainly stopped the women from attending the mosque for prayers.

It is in this context that the Muslims jurists have been unanimous on the point that it is not advisable for women to attend the congregational prayers in a mosque, rather most of them have taken it as a prohibited act.

At the same time it should be kept in mind that even though the participation of women in a congregational prayer is not advisable according to the Shari'ah, yet, if they join a congregation at some occasion, the prayer will be valid. In this case, they have to stand behind the rows of the males and the Imam should have the intention that he is leading both males and females in prayer.[1]

Similarly, the congregation of females only is held to be *'Makrooh'* by the Muslim jurists. However, if at some occasion, the women elect to arrange their own congregation led by women, the female Imam should stand in the centre of the first row and not in front of the followers as the male Imam is supposed to do. As mentioned earlier, it is not advisable for women to pray in the mosques. However, if they elect to do so, their prayers will be valid according to the Shari'ah. In any case, the observance of Hijab while joining a male congregation is mandatory which cannot be dispensed with in any way.

I hope that this will satisfy your question. I would like to emphasise once again that the basic purpose of a Muslim, male or female, should be to follow the dictates of Shari'ah and to seek the pleasure of Allah and not to satisfy one's own desire. The congregation of the male Muslims has

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1. There is a Hadith of the Holy Prophet (S.A.W) to the effect that women should not be prevented from praying in the mosque, should they elect to do so. (EDITOR)

been held as a meritorious act for the simple reason that Allah Almighty has declared it meritorious for the males but the case of women is totally different. Here, the Messenger of Allah has expressly mentioned that it is more meritorious for a woman to perform prayers in her home. Therefore, Muslim women should not insist on going to the mosque for joining the congregational prayers because the reward promised for a congregational prayer shall be available for them in their homes and not in the mosque.

9

ON SALAH

Q *Some people seem to recite words used in salah without moving their lips. What is the correct method?*

A Well, reciting words verbally is necessary in *salah*, no matter how low the voice is. But, the movement of the tongue, and the movement of lips in the required words, is necessary. Now, if a person stands in *salah* and recites everything within his heart, his salah will remain simply unperformed.

Q *Some people look here and there while in salah. Is this permissible?*

A For a person who stands to perform his *salah*, the *masnun* method is to set his eyes on the spot where he is to perform his sajdah; and if his eyes are not on that spot and he is looking towards what is in front of him, this act is of his contrary to *sunnah*, but the salah will still be valid. Now, if a person is looking towards his right or left and he has done it in a manner that his neck has not turned towards either side, his salah will be valid, although doing so unnecessarily is makrooh (reprehensible). And if he intentionally looks towards his right and left having turned his neck then, this is outright impermissible; and if anyone does this in a way that the average onlooker finds it totally foreign to *salah*, then, the *salah* itself will become invalid.

Q *When we follow the Imam in salah, we are supposed to make an intention that we are doing so. Do we make this intention verbally, or in the heart, or just stand which will become the symbol of our intention to follow the Imam?*

A A lot of misunderstanding seems to be concerning *niyyah* or intention in *salah*. People think if they do not actually say the set

words of nīyyah before starting to offer their *salah*, their *salah* will not be valid. This is not correct. *Niyyah* means the intention of the heart. When a person is going to offer his *salah* in a congregation behind an Imam, it is not necessary that he should say this in words. The formal set of words used 'to form' an intention should not be taken to mean that *salah* will not be established if these are not repeated verbally. This notion is incorrect. Think of a person who joins the congregation with the Imam going for *Ruku'* (bending position) and while he is still standing and struggling with the formalized words of intention, the Imam rises from the *Ruku'*. So, as I said earlier, this formal verbalization of the words of intention is not necessary at all.

The same is true about the intention (*niyyah*) of keeping a fast. I get a lot of telephone calls at the time of *suhur* (*sehri*: pre-dawn snacks in Ramadan) telling me that something terrible has happened to the caller. When I ask him as to what it could be at this hour, he would say that he has eaten his *suhur* but forgot to make the intention to keep the fast. When I ask, "Why did you eat your *suhur* on this dawn of Ramadan?" - the answer is, "To fast". I ask, "How is it that you made no intention then?" The answer is, "Well, Sir, I did not say the words of intention," that is, (بصوم غد نويت "I intend to keep the fast of the month of Ramadan for tomorrow"). So, all this formalism is wrong. *Niyyah* is the intention of the heart. Therefore, anyone standing behind an Imam to offer his *salah*, for all practical purposes, intends in his heart that he is going to follow the Imam.

Q *It is common observation these days that a late joiner of congregation would join in by saying the takbir (Alahu-Akbar) and go for Ruku' (bending position) without making it a point to observe Qiyam (standing position). At times, the essential takbir, because of this hurry, is dragged into the Ruku', where it does not belong. Given this situation, will the salah be valid?*

A This *rakah* will not be counted as valid. Standing, even if it be for a while, and saying *Allahu-Akbar* in that standing position is necessary. One goes for *Ruku'* after having done that.

Q *A person joins the congregation after the Imam has performed the Ruku' and he stands in the row and waits for the Imam to rise for the next raka'ah since he knows that he has lost the Ruku' and therefore, the raka'ah too. Is this correct?*

A No. He should go for *sajdah* after the Imam immediately. He should not wait for the Imam to rise for the next *raka'ah*. This has been explicitly prohibited in *hadith*.

10

THE TIME OF SALAH FOR WOMEN

Q *"Is it necessary for a woman to wait for the call of Azan before she can offer her prayers (salah) or can she perform her prayers as soon as the time for that particular prayer becomes due?".*

(Ibid)

A The ladies need not wait for the call of *Azan*. They can offer their prayers soon after they are sure that the time for a particular *salah* has arrived, no matter whether the call of *Azan* has been pronounced in the *musjid* or not. The Holy Qur'an says,

«أن الصلوة كانت على المومنين كتابا
موقوتا»

Surely, the Salah for the muslims is an obligation related with time.

It is clear from this verse of the Holy Qur'an that the basic requirement for the validity of a particular *salah* is that it should be performed within the time prescribed for it. The call of *Azan*, on the other hand, is meant for inviting men to proceed to the *masjid* for their congregational prayer. Since women are exempt from joining the congregational prayers, they are not concerned with the call of *Azan*. They can offer their prayers in their homes well before *Azan*, provided the prescribed time has arrived. The only thing they are required to do is to make sure that the prescribed time has come.

11

THE NUMBER OF RAK'AT IN JUM'AH PRAYER FOR MEN AND WOMEN

Q *"How many Rak'at are sunnah mu'akkadah in jum'ah prayer? Is there any difference between men and women in this respect?".*

(Ibid)

the *sajdah of sehw.*

However, if the person has missed one or two *rak'at* from the *jama'ah* and he is offering the missed *rak'at* on his own after the congregational prayer is over, and he makes a mistake for this duration, he will have to offer the *sajdah of sehw*, because, while completing the missed *rak'at*, he is deemed to be a person who offers the prayer individually, and the *sajdah of sehw* is obligatory on him like any other individual.

Q *"Is it permissible, under the Shariah, to make supplication (Du'a) while one is in Sajdah. It is commonly observed that some people after completing their prayer (Salah) fall in Sajdah and offer supplications in that position. Please explain the correct way in this respect.*

(Muhammad Yousuf Ghani, Karachi)

A Supplication during *Sajdah* is permissible, but the following points should always be kept in mind:

(a) While offering *Sajdah* in a regular prayer (*salah*) the medium of supplication should always be Arabic language. It is not permissible to use any other language during *salah*.

(b) One should restrict himself, as far as possible, to the supplications contained in the Holy Qur'an and Sunnah. However, if one likes to pray in his own Arabic words, the prayers should be restricted to those things only which cannot be asked from a human being, such as

«اللهم اغفر لی ولز وجتی ولاولادی»

"O Allah, forgive my sins and the sins of my wife and my children."

This Arabic supplication is permissible because forgiveness of sins cannot be asked from a human being but those things which can be asked from a human being cannot be asked in a prayer offered while performing *salah*, such as (O Allah, make me marry such and such woman). If somebody prays for such mundane things which can be asked from a human being also, the *salah* will be rendered void, even if the medium of prayer is Arabic language.

(c) Although offering supplications during *sajdah* is permissible with the conditions mentioned above, it is more advisable to avoid it during the *Fard salah*, and restrict it to the *Nawafil* only.

All the rules mentioned above relate to the supplications offered in a *sajdah* which forms part of *salah*. However, if someone makes a *sajdah* out of *salah* for the purpose of supplications only, there is no prohibition, nor is it necessary to observe the conditions mentioned in (a), (b) or (c) above. In such a position one can pray in whatever language one deems fit.

It is, therefore, permissible to make *sajdah* for the purpose of supplication after the *salah* is over. However, this should not be made a permanent practice after every *salah*, because the Holy Prophet (S.A.W.) used to pray after *salah* in a sitting position, and it is in no way advisable to leave this sunnah of the Holy Prophet (S.A.W.) forever.

13

CONGREGATIONAL SUPPLICATION

Q *"It is noticed lately, in some mosques, that supplications (Du'a) is offered in congregation, lead by the Imam with loud and piercing voice, a sight frequently observed in normal days, and particularly during Ramadan in the Lailatul qadr. Is there any justification for such congregational prayers in Shariah? If not, what is the prescribed way for the person leading the prayers (imam) to make supplication?*

A Congregational supplication, is never reported to be performed by the Holy Prophet (S.A.W) in the manner explained in your question. It appears from the relevant *ahadith* that in the days of the Holy Prophet (S.A.W) he used to pray on his own, even after salah. But at the same time there is no clear injunction in the Holy Qur'an or in the Sunnah which prohibits such congregational supplication. In view of both these aspects, the correct position is that congregational supplications are neither a sunnah nor something prohibited. It is only one of the several permissible ways of performing supplications.

However, if somebody takes this congregational method as obligatory or as a *sunnah* of the Holy Prophet (S.A.W), then this wrong concept will render this practice a *"bid'ah"* (innovation), hence impermissible, because a practice which was not obligatory or a *sunnah* at the time of the Holy Prophet (S.A.W) cannot be held as such after him. It will be a self-coined addition to the prescribed ways of worship, which is termed as *bid'ah* in the words of the Holy Prophet (S.A.W) and is strictly prohibited.

In the light of this principle, if the congregational way of supplication

is adopted only for the convenience of the audience, without taking this particular manner as an obligatory method or a sunnah of the Holy Prophet (S.A.W) it is quite permissible in Shariah. But if this method is observed with a belief of its being obligatory or a sunnah, it is not allowed.

It is noticed that where congregational supplications are permanently observed, it sometimes creates an impression that such collective supplication is a necessary part of the salah, since this impression is not correct, as discussed earlier, it is advisable to avoid congregational form of supplication at frequent occasions, and to educate the people about the correct position as mentioned above.

14

MISUSE OF LOUDSPEAKER

Q *Admittedly, the use of Loudspeakers installed outside the Masjid is of benefit to the Ummah when Azan is called for prayers five times a day. However, I have the following questions in respect of the use of these OUTSIDE LOUDSPEAKERS:*

1. Shouldn't the volume of the Loudspeakers be restricted or controlled so as to reach a reasonable area around the particular Masjid? In the area surrounding my place of residence, there are five Masajid, two of which are within a one hundred yard radius. For Azan at Fajr and Isha, it seems that the Loudspeaker might as well be inside my house for the volume is so high windows would shatter if the house was sealed shut.

2. Each of the five Masajid, at Fajr in particular, recite the Azan 10 to 15 minutes apart. Is this necessary? Even if the Jama'ah is held at different times before sunrise could the Azan be recited at one "Universal" time in the area?

3. Is it permissible to use OUTSIDE LOUDSPEAKERS to recite Salat wa Salam and/or Sermons? One or two of the Masajid in our area do this daily after Fajr prayers and due to timing difference in Jama'ah prayers, this high volume clashes with the Jama'ah Namaz in progress at other Masajid. It also adversely affects individuals praying / meditating at home after the Fajr prayers.

4. One of the Masajid in our area makes a daily announcement on the OUTSIDE LOUDSPEAKERS at sunrise to the effect that it is time for sunrise and it is forbidden to offer Namaz at this time and that Namaz can be offered a few minutes later. First, isn't it improper to use the OUTSIDE

LOUDSPEAKERS for this purpose, and secondly, does everyone have to be advised of this on a daily basis?

5. I do not think that the Masjid's OUTSIDE LOUDSPEAKERS be used for any announcement other than the AZAN, with the possible exception of calling people for Namaz-e-Janazah. However, one of our area Masjid makes announcements on death of people in and outside the immediate area as well as those outside our city and country: they announce for meetings to solve their Water Bill problems, for special sermon meetings for ladies etc. And these announcements are made without regard to time of day or night. I am sure ISLAM does not allow for such acts. Could you please comment on this and advise which judicial authority should be approached to rectify this as protests to the Masjid committee have fallen on DEAF EARS.

(Muhammad Hassan Chand, Clifton, Karachi)

A You have raised a very important question which requires serious attention of the imams and the management bodies of the mosques. No doubt, Loudspeaker is a very useful instrument to extend the voice of Azan to a wider range and to enable all the audience sitting in the mosque to hear the sermon. But, like any other thing, if it is used indiscriminately without observing the limits prescribed by the Shariah, it becomes harmful and injurious. The way it is used in a large number of the mosques in our country is not warranted by the principles of Shariah. It does not only hurt the people living around the mosques, but also creates adverse feelings against the mosque managements and other religious circles.

As far as Azan is concerned, the Holy Prophet (S.A.W.) has emphasized its recitation with a loud voice which may reach distant places also. The use of Loudspeaker facilitates this objective. Hence it is not only allowed, but also advisable. Your suggestion that the *Azan* in different mosques near to each other, should be recited at the same time is also a good suggestion which may be acted upon.

But while offering *Salah* or delivering a sermon, it is necessary according to the settled principles of Shariah that the voice of *qira'ah* or the sermon should not exceed the relevant *musallis* or the audience, as the case may be. If the voice spreads outside the mosque, it may disturb the people and prevent them from performing their activities properly. There may be patients who may suffer. There may be people performing acts of worship who lose their concentration. There may be numerous situations in which a loud voice may cause different harms. The Muslim jurists are also unanimous on the point that the recitation of the Holy Qur'an in a loud

voice is not allowed before people who are engaged in their own activities and cannot listen to the Holy Qur'an with its due etiquette. So, the recitation of the Holy Qur'an on an outer Loudspeaker brings this additional problem.

It is mentioned in a number of Islamic authorities that the voice of sermon should not exceed its actual audience. Sayyidena 'Aisha (R.A.) advised a *wa'iz* (religious orator) in the following words,

> *Restrict your voice to your audience and address them only as far as they are attentive to your speech. When they turn their faces from you, stop.*[1]

'Ata' ibn Abi Rabah, the famous *tabi'i, muhaddith* and jurists says,

ينبغي للعالم أن لا يعدو صوته مجلسه

> *The voice of a learned man should not exceed his audience.*[2]

It is reported by the Holy Companion 'Abdullah ibn 'Umar (R.A) that an orator used to deliver his sermons before the door of Sayyidena 'Aisha (R.A) . She wrote to Sayyidena 'Umar (R.A)

> *"This man has caused me discomfort and has left me in a position that I cannot hear anything (except the voice of the orator)."*

Sayyidena 'Umar (R.A) sent a message to the orator asking him to refrain from speaking so loudly before the door of the Mother of the Muslims. But the orator repeated his practice once again. When Sayyidena 'Umar (R.A) was informed about it, he himself went to him and subjected him to punishment.[3]

These quotations are more than sufficient to prove that the voice of a sermon should never be allowed to disturb the people engaged in their own activities.

In the light of this principle, the Loudspeaker should not be used at all where the number of *musallis* or the audience is such that they can hear the voice of *qira'ah* or of the sermon without a Loudspeaker. However, if there are many in number and cannot hear the voice directly, only the inner Loudspeaker should be used, and not the Loudspeaker installed outside the masjid.

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(1) Akhbar-ul-Madinah, by 'Umar ibn Shabbah v.i.p. 13
(2) Adab-ul-imla', by Sam'ani p.50
(3) Akhbar-ul-Madinah, v.i.p.15

On the basis of the above, the brief answers to your questions are as under:

1.Of course, even for the purpose of Azan the volume of the Loudspeaker should be within the reasonable limits according to the needs of the relevant locality.

2. As mentioned earlier, recitation of Azan in all the mosques of at least one locality can be carried out at one time, like the current practice in Saudi Arabia.

3. As discussed above, no sermon or *Salah wa Salam* should be delivered from the outside loudspeaker. In fact, there is no reason to use a Loudspeaker at all for offering *Salah wa Salam* because it is not a collective act in Shariah.

4. The announcement of sunrise may be useful for those sitting in the mosque, but the use of the Loudspeaker for this purpose seems to be unnecessary.

5. The use of the Loudspeaker for such announcements should also be avoided, except in cases of necessity.

Before parting with this question, I would like to emphasize that when the unnecessary use of Loudspeakers for such pious objectives is not allowed in Shariah, how can it be permissible to disturb people by the loud voices of songs or musical instruments used in different ceremonies or meetings? This practice is far more objectionable and sinful.

As for a judicial action against such activities, one can approach the law enforcing agencies to implement the relevant law, but one should try in the first instance to solve the problem by mutual understanding, on an amicable basis.

15

40 PRAYERS IN MADINAH

Q *"Is it mandatory, according to Shariah, to complete 40 prayers in Masjid-i-Nabawi when one visits Madinah Munawwarah?" (Ibid)*

A No, it is not mandatory. Even the visit of Madinah Munawwarah is not mandatory, nor is it a part of Hajj.

However, the visit of Madinah is very desirable, its visitor deserves much reward in the Hereafter and the person who can afford this visit

should not make himself devoid of this reward, yet it is not as obligatory as the Hajj itself.

When the visit of Madinah itself is not mandatory how can it be said that performing 40 prayers is mandatory?

However, if somebody can stay in Madinah Munawwarah for at least one week, it is much advisable for him to complete 40 prayers in Masjid-e-Nabawi, because the noble companion Anas ibn Malik (R.A) reports the Holy Prophet (S.A.W.) to have said,

من صلى فى مسجدى أربعين صلاة لا يفوته صلاة،
كتبت له براءة من النار ، ونجاة من العذاب ، وبرئ من
النفاق»
(أخرجه منده ٣ : ٥ الهيثمى فى مجمع الزوائد ٤ : ٨ : رجاله ثقات)

Whoever performs forty prayers in this my masjid, destined for him is the freedom from Fire and redemption from the punishment, and he becomes immune from hypocricy.

This saying of the Holy Prophet (S.A.W.) which is held by the scholars of hadith to be authentic, mentions the excellent reward one can enjoy by offering 40 prayers in the Masjid of the Holy Prophet (S.A.W.). Therefore, every Muslim who finds an opportunity to stay in Madinah for one week, he should not miss this remarkable gain. But, by no means can it be said that it is mandatory for every visitor of Madinah.

16

JUM'AH PRAYER WHILE ON JOURNEY

Q *"What is the position of Jum'ah prayer in journey? How far the Jum'ah prayer is mandatory when one is on travel?" (Ibid)*

A Jum'ah prayer is not mandatory (fard) on a traveller. It is permissible for him to perform the Zuhr prayer instead of Jum'ah. But since the Jum'ah prayer is far more rewardable than the normal Zuhr prayer, one should not miss it as far as possible even when he is on journey.

17

AZAN AND IQAMAH IN SMALL JAMA'AT

Q *"While living in North America, we often perform salah with Jama'ah in our houses, shops, parks etc. Sometimes the number of participants does not exceed 2-3 persons. Is it necessary for us in these prayers to say azan and Iqamah?"*

A Yes, Azan and Iqamah both are *sunnah* even when the number of the participants in salah is very small. The Holy Prophet (S.A.W.) once advised any two persons going on journey that whenever the time of 'salah' comes, they should say Azan and Iqamah and then perform *salah* with *iqamah.*

18

HOW TO PERFORM SALAH WHERE QIBLAH IS NOT KNOWN?

Sometimes we are at a place where we do not know the exact direction of Qiblah. How should we perform Salah in such places? Can we use the scientific instruments to find out the direction of the Qiblah? What should we do if we do not have such instruments?

(Abdullah - Toronto, Canada)

Certainly one can use the scientific instruments to find out the accurate direction of Qiblah. However, if somebody is at a place where he has no such instruments nor can he find anybody to tell him the correct direction of the QIblah, he should to the best of his ability find out the direction by estimate. After doing his best, he can offer his prayer facing a direction which seems to him more correct; His salah will be acceptable in *Shariah.*

In this case, even if it is learnt after performing *salah* that the correct direction was otherwise, the *Salah* is acceptable, and the same need not be performed again.

It should, however, be kept in mind that this rule is applicable only to a person who has done his best to find out the correct direction of the Qiblah. Conversely, if he has not applied his mind to ascertain the *Qiblah* and performed *Salah* carelessly to any direction, his *Salah* is not acceptable in case he has performed it facing a wrong direction.

19

QASR AT THE AIRPORT

Q *We know that the Shariah has allowed us a concession of performing two Rak'ah of Salah in place of four when on travel. The concession is known as 'Qasr'. The question is exactly when should we start "Qasr" after leaving our home? Sometimes we have to perform prayer at the airport of our city. Can we avail of the Qasr concession when praying at our airport or on our way to airport?*

(ibid)

A The Qasr concession is allowed to a traveller bound for a distance of 48 miles or more, but the concession can be taken as soon as he comes out of his city. He cannot avail of the *Qasr* when he is still in his own city. Therefore, if the airport is situated within the city where he lives, in the sense that the buildings of the city are linked with the airport without a considerable break in between, such as the Karachi Airport, the Qasr cannot be availed at the airport. In this case the normal number of *Rak'at* will be necessary while performing *Salah* at the airport. However, if the airport is outside the city in which one lives, in the sense that there is a considerable open space between the buildings of his city and the airport, he should perform *Qasr at* the airport if he wants to offer *Salah* before boarding.

The same principle will apply to one's performing *Salah* on his way to airport. As soon as one crosses the buildings of his own city he should perform *Qasr* even if he has not reached the airport. But in case he is passing through his own city, he cannot avail himself of the *Qasr* concession.

The same rules should be followed in the case of Railway station and seaports also.

20

SUNNAH-SALAH IN JOURNEY?

Q *Should we perform the Sunnah Salah while we are on journey and whilst performig Qasr in the obligatory prayers? Some people say that the Sunnah Salah is not permissible in journey, and the Holy Prophet did not perform it during his travels. What is the correct view of the Shariah?*

(ibid)

A The correct position, according to the majority of Muslim Jurists, is that the Sunnah becomes *Nafl* or *mustahabb* when one is on travel. If he performs it, he deserves much reward, but if he leaves it, there is no sin on him.

It is not correct to say that the Holy Prophet did not offer the Sunnah prayer during his travels. In fact, sometimes the Holy Prophet did perform the Sunnah prayer while on travel and sometimes he did not. Both ways are equally established by the authentic traditions. For example, the blessed companion Bara' ibn 'Azib reports that he accompanied the Holy Prophet in eighteen journeys and he never found him abandoning the two rak'at after the Zawal.

(See Tirmidhi and Abu Dawood)

Even 'Abdullah ibn 'Umar has reported both ways. In a tradition he reports that the Holy Prophet did not offer the *Sunnah* or *nafl* prayers in his travels but in another report he says that the Holy Prophet used to offer Sunnah or nafl prayers. Both the reports are available in the *Sunnan* of *Tirmidhi.* There is, in fact no contradiction between the reports. Actually, the Holy Prophet (S.A.W.) sometimes prayed the Sunnah prayers, and sometimes left them.

So, all the four muslim Schools (Hanafi, SHaf'i, Maliki and Hanbali) are unanimous on the point that performing the Sunnah prayers in journey is more desirable if one is in peaceful condition. However, if someone does not offer the Sunnah prayer while he is in journey, he should not be regarded as sinful.

(See Almughni, Ibn Qudamah (2:141) and Ibn 'Abidin).

21

PERFORMING QADA' PRAYERS

Q *"A person is regular in his daily five time prayers, but for some reason one of his prayers becomes qada', and the time for next prayer arrives. What should be the sequence of the performance of his prayers, under such a situation?"*

A The person who has never missed six prayers, or the number of his *qada* prayers is less than six is termed as "sahib-ut-tartib". Whenever a prayer is missed by such a person, he has to observe full sequence between the prayers. He is bound to perform the *qada'* prayer before the *ada'* prayers of the time. For example, if he has missed the *Zuhr*

prayer, then at the time of *'Asr*, he must perform the *qada'* of *Zuhr* first, and the *ada'* of *'Asr* after it. If he performed *'Asr* before the *qada'* of *Zuhr*, his *'Asr* prayer will be void, and he will have to pray again.

Observance of sequence is necessary between the different *qada* prayers also. All the *qada* prayers should be performed in the same order in which they were missed. So, if a person has missed both the *fajr* and the *Zuhr* prayers, then, at the time of *'Asr* he must perform the *qada* of *fajr* first of all, then he should perform the *qada* of *Zuhr*, and then he should pray the *'Asr*. If he disturbed this sequence, he will have to pray again observing the due sequence.

The observance of sequence is obligatory on every *Sahibut-tartib* in normal conditions. However, if he, while performing *'Asr* prayers, forgot that his *Zuhr* prayer had been missed, and he prayed *'Asr* under this impression, his *'Asr* prayer is acceptable and he need not pray it again.

Similarly if the time of *'Asr* remains so short that, in case he prays *qada'* first, the *'Asr* time will be over, then also he can pray *'Asr* first.

All these rules relate to a person who is *sahibut-tartib*. But if a person is not *sahibut-tartib* i.e. the number of *qada* prayers due on him is six or more, the observance of sequence is not obligatory on him and he can pray in whatever order he likes according to his convenience.

22

QURANIC PRAYERS DURING MENSES

Q *"We do know that a woman, during her monthly periods, is forbidden from performing Salah and from the recitation of the Holy Qur'an. But we want to confirm whether the Arabic prayers and the "Tasbihat" are also prohibited for a woman during her monthly period? Please also tell us about the "durood Sharif", whether it is allowed or not"*

(Yasmin Nasim, Karachi)

A Only four kinds of 'ibadah' (worship) are prohibited for a woman during her monthly periods,

(i) Salah (namaz)

(ii) Fast,

(iii) Tawaf of the Ka'bah

(iv) recitation of the Holy Quran.

All other forms of worship are allowed for her. She can recite any *dhikr* or *Tasbih.* She can recite *durood sharif* (*Salah* on the Holy Prophet {S.A.W.}) She can also supplicate in whatever language she wishes. Even the Arabic supplications of the Holy Prophet (S.A.W.) are allowed, with the intention of du'a' (prayer) not of tilawah (recitation). For example the *Surah al Fatihah* consists of certain prayers. If a woman recites the Surah al Fatihah in order to receive the reward of recitation only, it is not allowed for her. But if she recites the Surah al Fatihah as a prayer and with a clear intention to supplicate, it is permissible for her even during her monthly periods. The same is true with other prayers and supplications found in the Holy Qur'an.

23

CONGREGATIONAL PRAYERS FOR LADIES (Further questions)

Q *"How far the ladies are allowed to offer their prayers in congregation (jama'ah)? What is the most preferable and superior position in this respect, as per Shariah? (Ibid)*

A The ladies are always required to offer their prayers individually. It is not advisable for them to offer prayers in congregation. Rather, it is held to be a makrooh (disliked) practice. Unlike men, the individual prayer of ladies carries more thawab. However, if some ladies insist on the disliked practice of offering their prayers in congregation, the woman who leads the prayer should not stand in front like a male Imam of salah. Instead she should stand in the middle of the women who perform salah in her leadership. But it is emphasized once again that the congregation of ladies for prayers should always be discouraged.

4

Zakah

1

HOW TO CALCULATE ZAKAH ON A BUSINESS?

Q (1) Is zakat payable on business? If so, how does one calculate the amount? I have overdrafts and loans in business too, as well as receivables outstanding.

(2) Is zakat payable on stocks? I have stocks from various periods starting from 30 days to over 365 days. There are certain stocks which are not sellable anymore.

(M.G.Y. Karachi)

A First of all, you should set a particular date of a lunar month for the valuation of your assets for the purpose of *zakah.* Better you choose the first of Ramadaan for this purpose, because this is the date on which the government also collects *zakah* from all the citizens. This date will be your *zakah* valuation date for each year as long as you remain *sahib-e-nisab* (the one on whom zakah is obligatory).

Then, you should calculate the value your zakatable assets as it stands at that valuation date. The zakatable assets are the following:

(i) Cash (including the balance of your bank deposits) at that date.

(ii) The market value of the shares of joint stock companies or NIT units or *mudaraba* certificates held at that date.

(iii) Face value of the financial papers, like bonds, KDCS, NDSCS etc.

(iv) The whole-sale value of the balance of stock-in-trade (including raw material) at that date, irrespective of the period of their retention.

(v) Receivable amounts (book debts) as on that date. From the total amount of the aforesaid assets, the following amounts may be deducted:

(i) Amounts payable to the suppliers of stock (including raw material)

(ii) Amounts payable at that date a rent to the landlord or to the lessor if equipment is acquired on lease.

(iii) The principal amount of loans borrowed from financial institutions and employed in acquiring zakatable assets, or any personal loans.

(iv) The amounts deducted by the government at source as zakah.

After the deduction of these amounts from the total value of the zakatable assets, as mentioned above, the balance will be your zakatable value. 2.5 per cent of this zakatable value is payable as zakah.

The period of retention of the stock is not material. The balance standing at the date of valuation shall be valued, no matter whether some stocks are acquired some months ago, and some are acquired just one day earlier. The completion of one year is needed only for the minimum amount of *nisab.* If somebody has been owning the minimum amount of *nisab* for the most parts of the year, he has to pay *zakah* on the balance remaining with him, on the date of valuation. 'Retention for one year' is not necessary in respect of each and every item. Therefore, whatever comes or goes during the year has no bearing on the calculation of *zakah.* It is only the balance remaining on the valuation date which is subject to *zakah.*

You have also asked about the stocks which are not "sellable any more". If you mean that these stocks are kept for personal use or for charitable purpose, they shall not remain *zakatable* any longer. But if you mean that they are available for sale, but nobody comes forward to purchase them, they are still *zakatable.* However, it should be remembered that *zakah* can also be paid in kind, therefore you can pay their *zakah* from those assets themselves i.e. you can give 2.5 % of those stocks in kind to a person entitled to receive *zakah.*[1]

2

PAYMENT OF SADAQATUL-FITR TO A NON-MUSLIM

Q *"Can the Sadaqatul-fitr be paid to a needy non-Muslim?"*

(XYZ Karachi)

A According to Imam Abu Hanifah, the Sadaqatul-fitr can be paid to a needy non-Muslim resident in an Islamic country if he does not own the nisab (a surplus amount equivalent to the value of 52.5 tolas of silver).

3

PAYING ZAKAH TO AN INDEBTED PERSON

Q *"A businessman suffered a loss in his business. He sold all his properties and paid his debts. He hired a house on rent and shifted*

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1. In valuing stock, the test of market value is as follows: What would a willing buyer pay to a willing seller if all the stock were sold in bulk in a single transaction on the valuation date? (EDITOR)

from a posh locality to an ordinary locality in a far off area of the city and joined a service. From appearance his standard of living still looks like his previous one (although he is without a car, telephone and other luxuries). He is still under the debt of approximately Rs. 2 million. He pays some amount every month from his salary to his creditors. Now, the question is:

(a) Can his debts be cleared by Zakah money?

(b) If it is permissible, should we pay his debts directly to his creditors, or should we pay him first and then ask him to pay off his debts?

Please also note that this businessman has to receive about Rs. one million from other people which is being received by him in parts and after long intervals.

(c) Is it necassary to tell him that it is the Zakah money, or can we pay him without any reference to Zakah, because he may feel humiliated if we tell him that it is a zakah money?

(d) If he pays some or all of his debts by zakah money, then he again becomes a rich man, should he return the money of Zakah to its original owners, or can he pay it to other poor people, or he need not do it?

(Ibid)

A (a) The principle is that if the debts of a person are equivalent to his surplus assets (including his receivables) or are more than that, he is entitled to receive *Zakah.* Likewise, if his surplus assets are sufficient to clear his debts, but after paying his debts, his remaining surplus assets do not reach the quantum of *nisab* he can also receive *Zakah.* However, if his surplus assets are such that even after clearing all his debts, they are equivalent to or more than the *nisab,* he cannot receive *Zakah.*

It is worth mentioning that the term "surplus assets" includes money and all those household goods and properties which are not required for his day-to-day needs.[1]

In the light of this principle, the businessman under question can receive *zakah,* because his debts are 2 million while his surplus assets (including his receivables) are less than that. Therefore, one can help him in clearing his debts out of the *Zakah.*

(b) If his debts are intended to be paid out of *Zakah,* the creditors

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1. But excludes assets covered by necessity, such as house, personal clothing, and one motor vehicle. (EDITOR)

should not be paid directly. Instead, money should be given to the indebted person who will pay it to his creditors, if he so wishes.[1]

(c) It is not at all necessary to tell the beneficiary of *Zakah* that he is being helped out of *Zakah.* One can give him the amount as a gift or as a present without referring to *Zakah.* The only condition is that while giving it to him, one should have a clear intention in his heart to pay *Zakah.* Even if a person gave money to the beneficiery as a *qard* or a loan, while in fact he intended to pay *Zakah* and never intended to get it back from him, the obligation of *Zakah* is discharged. However, if he comes thereafter to repay the loan, he should refuse to accept it.

(d) Once a person has received *Zakah* while he was entitled to receive it, he is not required to return it to the original payer,no matter how rich he may become later. . . Therefore, if that businessman becomes rich once again, he is not required to pay back the *Zakah,* neither to the original owners, nor to other poor people. However, he will be required to pay this own *Zakah* according to his assets owned by him at that time.

4

ZAKAH ON UNQUOTED SHARES

Q *"How is zakah calculated and paid on the unquoted shares which cannot be sold through stock Exchange?" (Nafesa Raja Hong Chik, Malaysia).*

A *Zakah* is obligatory on the market value of the shares of every joint stock company. Although the market value of the unquoted shares cannot be determined through the stock Exchange, yet there are two ways to determine their value.

1. Some unquoted shares are sold and bought through "over the counter" transactions i.e. by mutual agreement of the buyer and seller and without the mediation of a stock Exchange. These "over the counter" transactions may determine the market value of the unquoted shares.

2. If the market value cannot be ascertained in this way for some reason, then the value of the unquoted shares should be calculated on the basis of the balance sheet of the company.

It has already been explained in Albalagh (June 1990 p.20) that a share holder can deduct from the Zakatable value a proportion equivalent to that of the fixed assets of the company[2]. The same principle is

1. Alternatively, the recipient authorizes the zakah payer to pay the zakah directly to the creditor concerned. (EDITOR)

2. In other words, non-zakatable assets such as plant and machinery, fixtures and fittings, are not taken into account. (EDITOR)

applicable to the unquoted shares also.

5

ZAKAT ON THE TRUST FUNDS

Q *"Instead of our managing a portfolio of shares, we have invested some spare cash in some trust funds i.e. private ones and also those set up by the government. The price of the fund is closely linked with the index of quoted shares and the price is given each day. Dividends are also declared and given each year.*

Do we have to treat this as cash and pay zakah on its market value or only on its dividends? In this case the dividends should be enough to cover for the zakah of 2,5% of total market value, therefore, it would not cause undue hardship as we do not have to sell the capital portion to pay the zakah." (Ibid)

A A "Trust Fund" is a mutual fund where a portfolio of the shares of different listed companies is maintained. The share of a participant in such a fund is represented by a negotiable instrument usually called a 'unit'. These 'units' represent their holders' proportionate share in the portfolio, and ultimately a proportionate share in different companies, as well as a proportionate share in the capital gain the portfolio earns. Thus, a unit of a "Trust fund" does not represent cash only, like the bonds, but it represents a proportionate share in the assets of the relevant companies also. Therefore, it will be treated like a share of a quoted company for the purpose of *zakah,* and all the rules mentioned with regard to the shares of a company are also applicable to the 'units' of a Trust Fund. Therefore, *zakah* will be payable on the market value of such units, irrespective of the amount of divident declared on them. It is like the stock in trade on which *zakah* is payable on the basis of its market value, irrespective of the rate of profit earned on it.

6

ZAKAH ON THE EMPLOYEES PROVIDENT FUND

Q *"In Malaysia, 20% of monthly salary is paid to the Employees provident Fund which keeps and manages the funds for us until retirement age. We are not allowed to take the money before retirement except in the case of death of the employee where it is paid to the heirs. How do we treat this asset in the payment of zakat?" (Ibid)*

A If 20% of the salary is deducted at source without giving this amount to the employee, *zakah* is not payable on the amount kept in the Employees' Provident Fund untl the same is received by the employee. When an employee receives it on his retirement, the amount so received shall form part of his zakatable assets of that year only, and such part of it as is not spent before the valuation date shall be subject to *zakah*, and *zakah* will be payable on the aggregate balance of his assets (including the balance of the amount received from the Fund) on the valuation date.[1]

7

WHO IS ENTITLED TO RECEIVE ZAKAH?

Q *"Can you tell precisely who is entitled to receive zakah? Can we spend the zakah money for the following purposes:*

(a) in building a religious school which is a profit making concern for the operator?

(b) in buying a computer or an airconditioner for a religious or a social body?" (Ibid)

A *Zakah* should always be given to a poor person who does not own the *nisab*. The *nisab* is 613.35 grams of silver. Any person whose surplus belongings do not reach the value of 613.35 grams silver can receive *zakah*. *Zakah* can be paid in cash or in kind, but in both cases the ownership of the property given in zakah must be transferred to a particular real person (and not a fictitious person) who is entitled to receive *zakah*. So, the construction of the building of a charitable institute is not a valid way of the disbursement of the *zakah* money, because in this case the property is not transferred to a particular real person. Likewise the donation of a computer or an airconditioner for a religious or a social

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1. In other words, the amount received from the Provident Fund must be held for one year before zakah is payable thereon. If the recepient has existing zakatable assets equal to nisab, then the amount received from the Provident Fund will be added thereon, and the whole amount, or the balance remaining (in case of expenditure) will be subject to zakah of the next valuation date. For example, the zakah payer's valuation date is 1st day of Ramadaan each year, and he receives the lump sum from the Provident Fund two months before that date. The lump sum will be added to his existing nisab, and he will pay zakah thereon on his valuation date next, namely, 1st day of Ramadaan. Because the amount paid to Provident/Pension Fund is deducted at source, it is not owned by the employee and does not constitute a payment by the employee from his own funds. Hence, what he receives upon retirement, may be treated as consideration for services rendered, and therefore a legitimate gain. Although this amount is not fixed at the time of conclusion of the contract of service, the failure to do so, as pointed out by Mufti Shafei (R.A) in his fatwa on the subject does not lead to dispute. At best, the employee has a claim against the Provident/Pension Fund subject to its rules as prescribed by Law but this claim is not converted into a strong debt ("QAWI"), hence no zakah is payable for the years preceding the receipt thereof. There is no distinction between a compulsory and voluntary pension fund in this regard. (EDITOR)

organization cannot be made out of the zakah money. However, if these things are given to a poor person (entitled to receive *zakah*) by making him the owner of a computer, or of the building, the obligation of *zakah* is discharged.[1]

8

ZAKAH ON AGRICULTURAL PRODUCE

Q *"There is no need to pay zakah on salary unless there is a saving left for a period of one year, whereas 10% of the farm produce is payable based on the current value of the produce irrespective of whether produce is sold or not. The zakah in such circumstances is paid upfront whereas the salary earner has the liberty of choosing how to use his earnings without having to deduct a certain portion first for zakah. It means that if he chooses to spend all his earning then there is no need to pay zakah. Would it not be a dis-incentive to the farmer as compared with the salary earner? Perhaps you can clarify this further". (Ibid)*

 Let me first clarify some misconceptions found in your question:

1. The rate of *zakah* levied on the agricultural produce is normally 5% and not 10%. The rate of 10% is confined to unirrigated lands only. The majority of cultivated lands are irrigated by canals, wells etc. The rate of *Zakah on* all these lands is 5%.

2. The *zakah* of the agricultural produce is payable in kind. Although it may be paid in cash, yet it is at the option of the owner only. It means that if the produce is not sold, he can pay the *zakah* in kind.

3. The agricultural produce should not be compared with personal savings. It should be compared with the stock-in-trade, because trade and agriculture are both productive activities. So, both of them are subject to the same principle. *Zakah* is payable on the stock-in-trade at the current market value irrespective of whether it has or has not been sold. Similarly, the agricultural produce is subject to *zakah*, even before it is sold. But in both cases the obligation is fulfilled by paying *zakah* in kind. The rate of *zakah* on agricultural produce is no doubt, double the rate of *zakah* on stocks, but the reason is obvious.

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1. In other words, there must be an unconditional transfer of ownership from the zakah payer to the recipient (natural person) who must be entitled to use or dispose of the property for his own benefit. (EDITOR)

The initial input in the case of agriculture is lesser than the initial investment in stocks, and the rate of output is greater in agriculture than in stock. There may be some exceptions to it, but the rules are always framed according to the normal conditions and not on the basis of exceptions.

A salary-earner has an advantage only when he does not invest his money in any type of trade, nor does he keep the surplus with him. This can only be imagined where the income is so little that he can neither save it nor invest it in a profitable business, and his salary suffices only for his personal needs. *Zakah* is not payable in such circumstances. He cannot be compared with a farmer who cultivates land for productive purposes. However, if the produce of a farmer is so little that there is no surplus after providing food for his family, zakah is not payable according to the majority of the Muslim jurists.[1]

9

CHANGE IN FINANCIAL STATUS AND ZAKAH

Q *"Mr. "A" is Sahib-e-Nisab and pays zakah regularly. Say, in 1989 he paid his zakah, and when the valuation date came in 1990, his financial condition became adverse. Consequently, he did not have the minimum wealth which is liable to zakah. In other words, on the valuation date of 1990, he became a non Sahib-e-Nisab. In 1991 also, his condition was no better. However, in 1992, on the valuation date, he again became Sahib-e-Nisab. Now, the question is, whether Mr. "A" should pay the zakah of the wealth accumulated on his previous valuation date when it comes in 1992 or by virtue of his becoming Sahib-e-Nisab after a gap of two years, he should let one year pass on his new wealth and then pay the zakah?"*

(Mohammad Yousuf Ghani, Karachi)

A In this case, the previous valuation date will not be applicable for the purpose of calculation of *zakah*. He will be liable to pay *zakah* after one full lunar year will pass on his newly acquired *nisab* of *zakah*.

The principle is that the valuation date, for the purpose of *zakah*, is the day on which the person acquires the amount of *nisab* for the first time. This valuation date will remain applicable as long as he remains *Sahib-e-*

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1. Those who have shares in listed or unlisted companies may choose to pay zakah by determining the actual zakatable assets and the value thereof by reference to the relevant companie's accounting records. This may result in a saving, as compared to paying zakah on the market value of the shares themselves. The zakatable assets of a trading company is normally represented by cash **plus** book debts **plus** stock in trade, **less**, liabilites, calculated as at the valuation date. (EDITOR)

Nisab and he shall calculate his *zakah* on the basis of the valuation of his assets on that date each year. For example, Mr. A became *Sahib-e-Nisab* for the first time on the 1st of Muharram in 1408 A.H. Now, he shall calculate his *zakah* on the 1st of Muharram in 1409 A.H. if he is still *Sahib-e-Nisab* on that date. Thus, the first of Muharram is his valuation date for all the following years as long as he remains *Sahib-e-Nisab*. He will calculate his *zakah* on the first of Muharram each year.

If he does not remain *Sahib-e-Nisab* on the first of Muharram in any of the following years then the first of Muharram will cease to be his valuation date. Therefore, if he acquires the *nisab* once again, the *zakah* will be subject to the new valuation date i.e. the date on which he acquires the *nisab* second time.

Consequently, in the above example if "A" remained *Sahib-e-Nisab* upto Ramadaan 1410, then he lost the *Nisab*, he will not value his assets for the calculation of *zakah* on the first of Muharram 1411, because he is not a *Sahib-e-Nisab*. However, if he acquires the *nisab* once again on the first of Rabi'ul-Awwal, 1411, and remains as such on the first of Rabi'ul-Awwal 1412, he will value his assets on the first of Rabi'ul-Awwal 1412, which will be his new valuation date. This new date will remain effective as long as he remains *Sahib-e-Nisab* on this date each year, and will change only when he ceases to be *Sahib-e-Nisab* on the first of Rabi'ul-Awwal in all of the following years.[1]

10

ZAKAH ON ZAKAATABLE ASSETS

Q .1 *We have a retail shop at a rented premises. We have paid a huge amount for its "goodwill" when taking its possession. The question is whether Zakah is payable on the value of the goodwill which has now increased considerably? If Zakah is payable on the goodwill, should we pay it on its original value or on the present value?*

No Zakah is payable on the value of the goodwill of a shop.

Q .2 *We have some stock in our shop along with some fixtures, furniture, etc. We have some cash-in-hand, some bank balance,*

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1. Changes in value of nisaab during the year will not affect liability. (EDITOR)

2. What would a willing purchaser pay a willing seller for the stock if sold as a whole in one single transaction on the valuation date. (EDITOR)

some receivable amounts and some payable debts. On what assets out of these categories should we pay Zakah and at what rate?

A *Zakah* is not payable on the fixtures and the furniture of the shop. You should pay *Zakah* only on the stock, cash-in-hand and on your bank balance. The amounts receivable from your customers are also liable to *Zakah*. You can pay *Zakah* on these receivable amounts either at the end of each year or after you actually receive them from your debtors. But in the latter case if you receive these amounts after more than one year, you will have to pay *Zakah* for all the preceding years also. So, it is more advisable to pay *Zakah* of all the receivable amounts each year together with the other zakatable assets.

The rate of *Zakah* in all these assets (i.e. the stock, the cash in hand, the bank balance and the receivable amounts) is 2.5 per cent of their value.

As for the debts payable to creditors, you can deduct their total amount from the value of your zakatable assets, *Zakah* not being payable on these liabilities.

Q *.3What should be the basis of valuation of our stock for the purpose of Zakah? Should we calculate the value on the basis of our cost price or on the basis of the present market price?*

A *Zakah* is always payable on the current market price of each zakatable asset.[2]

Q *.4On which of the following assets of an industry, Zakah is payable? Land, building, machinery equipment, warehouse, raw material, finished goods, cash in hand, bank balance, amounts receivable, transport vehicles?*

The following assets of an industry are subject to the obligation of *Zakah*:

a) raw material

b) finished goods

c) cash - in - hand

d) bank balance

e) amounts receivable, subject to the details given in answer to the question no. 2.

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1. This is the Hanafi view which in specific situations may result in the non-payment of zakah. Hence, the learned author has adopted the Maliki view. Imam Zufar, a Hanafi jurist, is also of the same view. (EDITOR)

The following assets of an industry are not subject to Zakah unless they are purchased with an intention of selling them again:

a) land

b) building

c) machinery / equipment / fixtures and fittings

d) warehouse

e) transport vehicles

Q *.5Can the amount of loans taken by an industry from the banks be deducted from the value of zakatable assets?*

A The general principle is that all the loans payable can be deducted from the value of zakatable assets when calculating the amount of *Zakah*.[1] But in modern conditions, if the amount of the loan is utilized in the construction of a building, or in the purchase of machinery or in the purchase of any other asset exempt from *Zakah*, like fixture and furniture, the amount of such a loan should not be deducted from the total value of zakatable assets.

Q *.6We have some export licences and some import permits. They are either obtained from the government free of charge or purchased from the market. These permits and licences have value in the market which fluctuates according to the market forces. Should we pay Zakah on the value of such licences or permits?*

A *Zakah* is not payable on export or import licences.

Q *.7According to the general practice Zakah is paid during Ramadan. The question is whether it is necessary to pay Zakah in Ramadan.*

A *Zakah* should always be calculated on the basis of the lunar calendar. Every person has his own *Zakah* valuation date which he must know. It is the date on which he, for the first time, acquired the ownership of the *nisab* (minimum quantum) of *Zakah*, i.e. the value of 613,35 grams of silver.

For example, you have acquired the ownership of 613,35 grams of silver for the first time on the first of Muharram. The first of Muharram is your valuation date for the purpose of *Zakah*. You should calculate the value of your zakatable assets owned by you on that date every year. The amount spent before that date need not be included in the zakatable

assets. Only the balance remaining with you on the valuation date is subject to *Zakah.*

If you do not remember the exact date on which you became the owner of the *nisab* for the first time, you can estimate the valuation date.

Therefore, the month of Ramadan is not the valuation month for everybody, the valuation date differs from person to person.

However, once the amount of *Zakah* is calculated on the basis of correct valuation date, it may be paid any time after the valuation date. But the payment should not be delayed unnecessarily.

Q *.1 We pay income tax and wealth tax regularly. The rate of wealth tax often corresponds to the rate of Zakah. Can we deduct the amount of such taxes from Zakah?*

A The payment of government taxes cannot discharge you from the obligation of *Zakah.* However, if you have paid the taxes prior to *Zakah* valuation date, as explained in answer to the previous question, the amounts of taxes so paid need not be included in your zakatable assets. But if you have not paid the taxes upto the *'Zakah'* valuation date, even though they have become due, you cannot deduct the amount of taxes from the zakatable assets.[1]

11

VARIOUS ZAKAH QUESTIONS

Q *.1a) Is 'Zakah' payble on a Bungalow/House irrespective of how big it may be, which is occupied by us?*

If 'Zakah' is payable, should it be on cost or on the Market Value?

b) If any loan is taken against the Bungalow or House, should Loan amount be deducted before calculating 'Zakah' Amount?

A a) Zakah is not payable on the Bungalow/House which you own and utilize for residential purposes. However, if the

1. This view must be reconsidered because taxes which are due and payable on the valuation date are debts, to the extent that if the relevant assessment is not paid, the government is given extraordinary powers to recover the debt by obtaining judgement and levying execution against the assets of the taxpayer. An ordinary creditor may waive his claim, but the government does not have the power to do so in terms of income tax legislation. There must, however, be a valid assessment issued by the Revenue Authority on the valuation date, for the amount thereof, to be deducted. The assessment is a genuine demand for payment. (EDITOR)

Bungalow/House is purchased or built with the intention of resale, then Zakah will be payable on it's market value.

b) A loan taken against the Bungalow/House can be deducted from the Zakatable amount,provided the Bunglow/House is for sale.

Q.2 Is 'Zakah' payable on Furnitures, Fixtures, such as Electric Equipment, Airconditioners, Carpets, Crockery, Furniture, etc.?

If payable, should it be on the Cost or on the Market Value?

A Zakah is not payable on furniture, electric equipment, airconditioners, carpets, crockery, and other items that are for household use.

Q.3 Is 'Zakah' payable on Bungalows/Houses or Flats which are given on rent or which remain vacant.

If payable, should it be on the original cost or on the market value?

A Zakah will be paid only on the rent earned from the properties owned . Zakah will not be paid for vacant property, unless procured for resale purposes; more specifically, for the sale of such assets.

Q.4 Is 'Zakah' payable on the cost or the market value of an investment made in open land (Residential plot)?

A If the residential plot is purchased for the purpose of resale then Zakah will be payable at the market value, but if the plot is acquired for purposes other than being resold then Zakah will not be payable.

Q.5 JEWELLERY

a) Is 'Zakah' payable on Jewellery and Diamonds? If so, on the purchase value or on the Market value?

b) Is 'Zakah' payable on Gold/Silver Jewellery in use by wife, daughter or kept as investment - If so, is Zakah payable on the Purchase Value? or the Market Value?

A a) Zakah will be payable on gold and silver jewellery, if such jewellery exceeds the minimum weights:

for silver : 52.2 Tolas / 613,35 Grams.
for gold : 7.5 Tolas / 87,479 Grams.

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1 The Shafei view is, that zakah is not payable on personal jewellery. (EDITOR)

Zakah will be paid as follows:

[Number of Tolas/Grams x cost of 1 Tola/Gram (Silver/Gold)]

multiplied by 2, 1/2% = Zakah amount

Zakah is not payable on diamonds, despite their value.

b) Zakah is payable on Jewellery of Gold/Silver even if it is used by your wife or daughters (Hanafi view).[1]

Such Zakah is calculated on the market value of the gold or silver used in the jewellery.

.6 Is Zakah payable on:

a) Premium of Insurance Policies (Personal). If payable, whether on the total premium amount paid. Should it be paid yearly or can be paid at maturity on total receipt inclusive of bonus etc.?

b) Investments made in Bearer Instruments such as prize Bond, NDFC, where no Zakah deductions are made. Is Zakah payable on the Face Value or on the accrued value? Can Zakah be paid on maturity?

c) On investment in Securities such as N.I.T. Units, Khas Deposit Certificates (Registered), in this case 'Zakat' is deducted on profits and on the Face Value each year, and nett amounts paid to investor. Are we liable to pay any other amount as "Zakat"?

d) Investment made in Public Limited Shares where 'Zakah' is deducted on Dividend paid. 'Zakah' is not deducted if dividends are unpaid.

Are we liable to pay "Zakah" each year if not paid by the company. Also whether 'Zakah' payable on Market Value of Shares = (Difference Value i.e. Market Value - Purchase Value)?

A a) Most of the conventional insurance modes are impermissible according to the Shariah. Anyone who has entered into such conventional insurance modes, should refrain therefrom. However, he is entitled to receive the amount of the actual premiums which he has paid into the company. So if he receives the premium back, he must pay Zakah on the amount which he has received. If he has received it after a number of years, Zakah will be payable for all the preceding years as well.

Any bonus, interest or insured amount paid to him by the

company will be impermissible. He must refuse to accept such sums or distribute it to those entitled to receive Zakah.

b) The "prize bond" and other investment instruments of the NDFC are in direct conflict to the injunctions of Islam. Any returns earned from such investments will resultantly be classified as impermissible. Zakah will be paid on the face value of the bonds and certificates issued by the NDFC (National Development Finance Corporation - Pakistan).

If Zakah is paid at maturity, then Zakah will have to be discharged for the previous years as well.

Any profit, prize or interest received on these bonds or certificates would be *Haraam*, hence not liable to Zakah. Yet the entire amount of this profit, prize or interest should be given as Sadaqah to anyone entitled to recieve Zakah.

c) The Zakah deducted on NIT Units (National Investment Trust - Pakistan) each year, need not be re-given, provided that Zakah is deducted on both the face value and the profit.

As for the Khas Deposit Certificate, profits given on them are impermissible in Shariah. Zakah is therefore payable on the face value of such certificates. Profits earned on them are of interest and should therefore not be accepted. Anyone receiving such sums should distribute them to those entitled to receive Zakah.

d) Yes, if Zakah has not been deducted by the company, you are under obligation to pay Zakah on the market value of the shares. You can deduct from the Zakatable Value a proportion equivalent to that of the fixed assets of the company (which are non-zakatable). If it is difficult to ascertain that proportion, then it would be advisable to pay Zakah on the total market value of the share.

Q.7 a) We have a firm which does import and export business. This firm also invested in a Building. The building stands in the name of a Partnership Firm. Part of the Building is given to a factory on rental basis.

b) Is 'Zakat' payable on the Building Value? Also whether on the original cost of the Building, the Depreciated Value or the Current Market Value?

A a) As mentioned earlier, if the building is not acquired or built with an intention to re-sell it, then no Zakah will be payable.

Only such part of the rent shall be liable to Zakah which stands in your balance on the Zakah valuation date of each year and which

has not been spent.

b) However, Zakah shall be paid on it's market value if the building is acquired or constructed with a clear intention of re-sale. In which event, it becomes stock-in-trade.

12

ZAKAH ON DIAMONDS

Q *In your June 1990 issue you mention on page 19:*

"zakah is not payable on diamonds, regardless of how high their value may reach".

Diamonds are an expensive marketable commodity like any other valuable item, regardless of whether they are used in making jewellery or retained as investment. They bring a fairly high capital gain. When gold in any form is subject to Zakah as is value of any other item held for long or short term investment and business purposes, why should the value of diamond be exempt?

Muhammad Hasan Chand
Clifton, Karachi.

A If diamonds or precious stone are purchased for trading purpose, i.e. with a clear intention of their resale, they are certainly subject to *Zakah* like any other item purchased with the same intention. But if a diamond or a precious stone is kept for personal use only, in that case *zakah* is not obligatory on its value.

The principle governing the levy of *Zakah* is that only those assets are zakatable which either fall within the definition of money, or are the metals universally accepted as a medium of exchange like silver and gold. All other assets are not zakatable unless they are meant for trade and resale.

The precious stones, including diamonds, are, no doubt, very valuable assets. But if they are not purchased for trading, they are not subject to Zakah. This principle is based on a Hadith:

(1) لا زكاة في حجر

"There is no Zakah on a stone"

(1) Although some of the reporters of this hadith are not reliable, yet the report is corroborated by 'Ikrimah.

On the basis of the above, the overwhelming majority of the Muslim jurists are of the view that precious stones are not subject to the levy of *zakah* unless they are acquired for the purpose of resale.

There are, however, some jurists like Imam Ahmad who believe that all precious stones are liable to *zakah*, even if they are kept for personal use (2).

Therefore, if somebody pays *zakah* on the value of these stones, it will be free from all doubts and will promise more reward. But so far as the mandatory nature of the levy is concerned, the view of the majority is supportive of non-obligation of zakah, because they are neither money nor a universally accepted medium of exchange. Moreover, the value of precious stones depends on their scarcity and rareness. They have no intrinsic value. Therefore, they are like valuable antiques or manuscripts which, on account of their rareness, sometimes have more value than gold. Still, they are not subject to *zakah* unless they are purchased for trade or resale.

Likewise precious stones may have more value than gold. Yet, the obligation of *zakah* is not imposed if they are not meant for trade.

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(2) Mugni of Ibn Khudaamah - Vol. 2, p 617.

5

Fasting (Saum)

1

THE FAST OF 15th SHA'BAN

Q I have read the Sha'ban issue of your magazine AL-BALAGH certain questions are bothering me with regard to fasting on the 15th of Sha'ban.

I would like to explain the reason for this question. Several months ago a friend explained to me that there is no special significance of the fast of the 15th of Sha'ban. However, he says this Hadith is absolutely weak to such an extent that one of its narrators was a person who was regarded by some scholars of Hadith as a fabricator of Hadith and a liar. Hence, he says that, until another reliable Hadith can be found the fast of the 15th of Sha'ban has no special virtue. He also explained to me the following points:

(1) He has not come across any of the Fuqaha having even mentioned fasting specifically on the 15th of Sha'ban; whereas they have mentioned the fasts of `Aashura and the six fasts of shawwal etc.

(2) While it has been narrated in many authentic Ahadith that Rasulullah (S.A.W.) fasted for most of the month of Sha'ban, this cannot be used to prove any special significance for the specific fast of the 15th of Sha'ban. He told me that those Ahadith must be explained as they are i.e. for the entire month of Sha'ban - not the 15th of the month.

(3) The Hadith regarding visiting the graveyard on the 15th of Sha'ban is much more authentic and reliable compared to the Hadith regarding fasting on the 15th of Sha'ban. However, despite this the Ulema have prohibited the people from making it a habit. Therefore, since a very great number of people observe only the fast of the 15th of Sha'ban and regard it as a sunnah, whereas the hadith in this regard is absolutely and totally weak, the Ulema should stop the people from this also.

(4) When I suggested that what harm can there be if people observed this fast even if in reality it is not sunnah or even Nafl, he stated: This is the way many Bidat have started (though this practice is not a Bid'ah). Furthermore this is a matter of "Aqeedah" and to regard something as Sunnah which in reality is not Sunnah is a very dangerous and grave matter. Hence it is necessary that either the act be proved Sunnah or else the people should be stopped from this since, if they practice it they would do so regarding it as a sunnah.

Hence I now wish to pose my questions.

(1) He has stated that this Hadith is "totally and absolutely weak" whereas Mufti Sahib has stated that "the scholars of Hadith have some doubts regarding the authenticity of this Hadith." Has he exaggerated in this claim of "totally and absolutely weak"?

(2) Is it true that one of the narrators was regarded as a fabricator and liar?

(3) Are his arguments in (1), (2), (3) and (4) above correct?

(4) On page 14 Mufti Sahib has written; "Although the scholars of Hadith have some doubts about the authenticity of this report, yet it is mentioned earlier that the fasts of the first half of Sha'ban have special merits...." I have not found any narration in the article which explains the special merits of fasting in the first half of Sha'ban. All the narrations deal with the fasts of the FIRST HALF of Sha'ban, please quote this for me.

(5) Mufti Sahib also stated the practice of the Salaf (elders). Who is meant by "elders"?

(6) If it is accepted that one of the narrators was accused of being a fabricator and a liar did the "Salaf" regard this Hadith as authentic "as is" i.e. despite the condition of this narrator?

(7) Mufti Sahib has stated; "therefore, it is advisable to fast on the 15th of Sha'ban as an optional (nafl) fast" Most people regard this fast as "sunnah" and not nafl. Is it incorrect to regard this fast as sunnah?

(8) Is this nafl fast equal to keeping a nafl fast on any other day for example, the 1st of January; whichever Islamic date that may fall on? (excepting Ramadan, the 10th of Muharram, etc)?

I hope Mufti Sahib will quickly answer these questions and remove my doubts and the doubts of many others here in this regard.

(Yousuf Desai, South Africa)

A I am grateful to you for your question which provided me with an opportunity to revise my article and to study the subject in more detail.

In fact, the fast of the 15th of Sha'ban is based on a tradition reported by Sayiddna `Ali. Its text runs as follows:

اذاكانت ليلة النصف من شعبان، فقوموا ليلها
وصوموا نهارها

When the Middle Night of Sha'ban arrives, you

should stand (praying) in the night and should
fast in the day following it.

This hadith is recorded by Ibn Majah in his *sunan*, one of the famous six books of hadith, and also by Baihaqi in his famous book Shu'ab-al-'iman'. Both of them have reported it without any comment about its authenticity. But after a critical analysis of its chain of narrators it is found that this tradition is mainly based on the report of Abu Bakr ibn Abi Saburah whose narrations cannot be relied upon. That is why the scholars of hadith have declared it as a weak (da'if) tradition.

However, the allegation that the narrator of this hadith i.e. Abu Bakr ibn Abi Saburah, is a fabricator who used to coin forged traditions does not seem correct. In fact, he was mufti of Madinah, a well-known jurist and he was appointed as a qadi (judge) of Iraq in the days of Mansur and was succeeded in this office by Imam Abu Yousuf. He was a colleague of Imam Malik. Once Mansur, the `Abbasi Caliph, asked Imam Malik about the scholars of hadith in Madinah. Imam Malik referred to three names, and one of them was that of Ibn Abi Saburah. Had he been a fabricator, Imam Malik would have never referred to his name in this context.

But despite his high position among the jurists, his memory was not of the standard required for the authenticity of a tradition. That is why most of the critics of hadith like Imam Bukhari etc. have held him as weak, but did not declare him a fabricator. Only Imam Ahmad is reported to have remarked about him that he fabricates hadith. But this remark alone is not sufficient to hold him as a fabricator, for two reasons: Firstly Imam Ahmad was born long after him, and his contemporary scholars never held him as such, secondly the Arabic words used by Imam Ahmad are sometimes used for confusing one tradition with another, and not for deliberate fabrication.

This is the reason why the majority of the scholars of hadith have held Abu Bakr ibn Abi Saburah as a weak reporter of hadith, but they did not declare him as a forger or a fabricator.

Now, coming to his tradition about the fast of the 15th Ramadan it is held by the scholars to be weak but I have not come across an authentic scholar who has treated it as a fabricated *(Mawdu`)* hadith. There are a number of books indicating the fabricated ahadith, but this tradition is not included in these books as fabricated.

It is well-known that Ibn Majah consists of about twenty ahadith held to be fabricated. The list of these fabricated ahadith is available, but the tradition in question is not included therein.

Therefore, the correct position is that this hadith is not fabricated. However, being reported by a weak narrator, it cannot be relied upon in the matter of the injunctions of Shariah. Thus, the fast of the 15th of Sha'ban cannot be termed as sunnah or mustahabb in the strict sense of the term.

Nevertheless, it may be advisable to fast in the 15th of Sha'ban without taking it as sunnah for several reasons:

Firstly it is fully established through a large number of ahadith that the Holy Prophet (S.A.W.) has emphasized on the merits of fasting in Sha'ban, and particularly in the first half of the month. The 15th day of Sha'ban, being the last day of the first half, is included in the preferable days for fasting.

Secondly, the merits of the 15th night of Sha'ban is established by more than a dozen ahadith. It means that this night should be spent in prayers and other forms of worship. On the other hand, all the blessed nights which the Muslims are advised to spend in worship are generally followed by fasting on the coming day[1] like in the *laylatul-Qadr*, where fasting on the following day is obligatory, or like the first night of Zulhijjah where fasting on the following days is optional, rather advisable. On this analogy, too, the 15th night of Sha'ban may be followed by an optional fasting on the following day.

Thirdly, the tradition relating to the merits of fasting on 15th of Sha'ban is, no doubt, a weak tradition, not competent to prove this practice to be a *sunnah* or a formal *mustahabb*, but it can be acted upon as a measure of precaution, provided that the practice is not taken as *sunnah* or a formal *mustahabb*.

It is for these reasons that some 'Ulama and elders have been fasting on the 15th of Sha'ban and have been taking it an advisable practice.

It is in this context that I had mentioned this fast as advisable in my previous article. But when I revised the article after receiving your question, I now feel that the relevant paragraph may create misunderstanding and it needs clarification. I now amend it in accordance with what is stated above in this article.

Again, I am thankful to you for your letter which enabled me to revise and correct my previous article. May Allah give you the best reward for it.

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(1) The nights of two Eids are an exception, because their following days are the ones in which fasting is totally prohibited but these nights are preceded with by a number of fasts, either obligatory, like in Ramadan, or optional like in Zulhijjah.

2

BLEEDING FROM THE THROAT DURING THE FAST

Q *"I am suffering from a disease in which blood often comes out of my throat. When I fast, does this bleeding or vomitting render my fast or wudu invalid?"*

(Anonymous)

A No, if the blood has come out of your throat and you have not swallowed it again, your fast is still valid. However, your *wudu* is no longer valid. You will have to perform it again, if you wish to perform prayer after it.

The same ruling applies when one vomits during fasting. One's wudu breaks, but does not render his fast invalid.

6

Hajj & Umrah

1

SHAVING THE HEAD AFTER HAJJ OR 'UMRAH

Q *"Is it obligatory to shave all the hair of the head after performing Hajj or 'Umrah, or a part of the hair can be cut? Please guide us with the detailed information according to Fiqh-e-Hanafi."*

(Muhammad Ashraf, Karachi)

A It is not obligatory to shave one's head or to cut all his hair at the conclusion of *ihram* in 'Umrah or Hajj. One can also cut his hair instead of shaving it. The minimum requirement for coming out of *ihram,* according to fiqh-e-Hanafi, is to cut one's hair at least to the measure of a fingertip from all sides of one's hair. If one has cut his hair to this extent, he can come out of *ihram.* However, if one's hair are too short, and he cannot cut them to the measure of a fingertip, he will have to shave his head without which he cannot come out of *irham.*

It should, however, be remembered that shaving the head is more preferable and carries more *thawab.* It is reported by a number of authorities that the Holy Prophet (S.A.W) has prayed to Allah thrice for bestowing his mercy on those who shave their heads after performing Hajj, while he prayed only once for those who cut their hair.

2

PERFORMING UMRAH ON SOMEONE ELSE'S BEHALF

Q *"If I go for Umrah from here, (i.e. from Dammam), am I required to first offer Umra on my own behalf and then perform another Umrah on behalf of someone else, by going back to Meekat and wearing Ihram? Or is it not necessary that when I enter the Hudood-e-Haram I should first perform Umra on my own behalf?"*

A This question is based on either of the two misconceptions generally found in the minds of the people who are not familiar with the Islamic precepts about *Umrah.*

The first misconception is that every body who wants to perform *Umrah* is duty bound to perform another *Umrah* on behalf of some other person, and the second misconception is that whoever wants to perform *Umrah* on behalf of someone else is duty bound to perform another Umrah on his own behalf. Both propositions are misconceived and incorrect.

In fact, if a person wants to perform *Umrah* on his own behalf, he is not under an obligation to perform another Umrah for any other person. Similarly, if he wants to perform *Umrah* on behalf of some other person he is not required necessarily to perform another *Umrah* on his own behalf, neither before nor after the *Umrah* he performs for another person.

3

HAJJ BECOMING MANDATORY AFTER PERFORMING UMRAH

Q *"It is commonly heard that if one performs Umrah once, then performing Hajj becomes mandatory (wajib) for him. Please clarify this point. (Yousuf Ghani, Karachi)*

A This is not correct. Merely performing Umrah does not make Hajj mandatory. But if a person who did not perform hajj before he reaches Makkah for any reason in the month of Shawwal or anytime thereafter before the 10th of Zulhijjah and he has resources to stay there upto the days of hajj, only in that case it becomes obligatory on him to perform hajj either that very year or in any subsequent year.

7

Family Law

Page

1

DUTIES OF THE SPOUSES : RIGHTS OF THE WIFE

Q *As a convert to Islam I greatly appreciate the Islamic literature such as your publication which helps me to advance in knowledge. I have three (3) questions which I would like you address for me. If you have addressed these questions in any of your past issues of Albalagh please let me know how I can obtain a copy Inshallah. If not would you please answer these questions for me or let me know if you intend to address these questions in any of your upcoming issues Insha-Allah. (Khadijah al-Khudri, Orlando, U.S.A)*

Firstly, all the time I hear of the duties of the wives in Islam, but no one seems to address the responsibilities of the husband. What is a husband's duty to his wife? Is he responsible for her financially and that's all? Who is to paint the house, mow the lawn, breed the children and raise them? Cook, clean, wash and iron? It seems to me that all or most of the Muslim males in America go to the mosque or perform Tabligh work while their wives are burdened with all the other responsibilities. It is little wonder that most of the Western women looking at the plight of women in Islam refuse to convert because they fear the slave mentality of the Muslim males.

A Before replying your specific questions I would like to clarify one basic point which should always be kept in mind in such matters.

One should clearly distinguish between the Islamic teachings and the general practice of the Muslims. Unfortunately we are living in an age where the majority of the Muslims are not aware of the noble teachings of Islam nor do they practise these teachings in their day-to-day affairs of life. Instead they are mostly influenced by different cultures in which they have been living. Therefore, everything the Muslims practise on the ground cannot be attributed to Islam, and while evaluating the merits of Islam, one should not refer to the practice of the Muslims today, rather he should turn to the Islamic principles laid down in the Holy Quran and Sunnah. Obviously, if the Muslims have abandoned the guidance of Shari'ah, it cannot be taken in any way as a defect in the Shari'ah itself, rather, it is the fault of those who have deprived themselves of this guidance.

Keeping this basic point in view, here are the answers to your questions:

(a) It is evident from a plain study of the relevant material found in the Holy Quran and Sunnah that Islam treats the relationship of marriage as a bilateral contract between husband and wife, each one of them having some rights and obligations. The Holy Quran is very much clear on this point when it says:

ولهن مثل الذی علیهن بالمعروف

"And the women have rights similar to their obligations". (2:228)

It is clear from this verse of the Holy Quran that the obligations of a wife towards her husband are not less than the rights she enjoys. The Holy Quran has summarized the obligations of a husband towards his wife in a short phrase where the Holy Quran has made it mandatory for a husband *"To keep her with fairness"* (2:229) At another place, the Holy Quran instructs the husbands in the following words:

وعا شروهن بالمعروف

"And live with them (wives) in fairness". (4:19)

Therefore, it is not correct that Islam has laid more emphasis on the obligations of a wife than on the obligations of a husband. Conversely, the Holy Prophet (S.A.W) has emphasized on the rights of women in a larger number of his sayings which are probably more than the sayings emphasizing the rights of a husband. Some examples are being quoted here:

i) The Holy Prophet (S.A.W) has said:

خيارکم خيارکم لنساءهم

"The best people from among you are those who are best to their wives". (Tirmidhi)

لا يفرك مومن مومنة أن كره منها خلقا رضی منها اخر

"No Muslim should hate his Muslim wife. If he dislikes some of her qualities, he may find some other qualities agreeable."

واستوصوا بالنساء خيراً

"Keep to my advice about women that you should treat them fairly." (Tirmidhi)

These examples are sufficient to disclose the great concern the Holy Prophet (S.A.W) has shown for the rights of a woman, so much so that he dedicated a substantial portion of his Last Sermon at the time of Haj-jatul Wida' to explain, elaborate and emphasise on the obligations of a man towards his wife.

You have referred to the fact that women today are burdened with the house work like cooking meals, cleaning the house and raising children while their husbands seldom assist them in these matters. Here I would like to mention the correct Islamic standpoint with regard to the obligations of a woman about the household work.

First of all, it is not a legal obligation of a wife, according to Islamic teachings, to cook the meals or serve the house, and if a woman elects to refuse to undertake these works, a husband cannot compel her to do so. However, apart from the legal injunctions, Islam has laid down some moral instructions for both husband and wife according to which they are treated as life-companions who should not restrict themselves to the legal requirements alone, but should join hands to make mutual life as comfortable and peaceful as possible. They are invited to cooperate with each other in solving their day-to-day problems. For this purpose it is advisable that, as cooperating friends, they should divide the necessary works between them according to their mutual convenience. The woman should look after the management of the house while the man should be responsible for outdoor economic activities. This division of work was the practice of the Muslims in the very days of the Holy Prophet (S.A.W).

Even Sayyidah Fatimah, the beloved daughter of the Holy Prophet (S.A.W) used to perform all the household functions with her own hands, while Sayyidna Ali, her noble husband, carried out the economic activities. The Holy Prophet (S.A.W) never objected to it, rather, he encouraged her daughter to perform all these functions.

It is true that from a pure legal point of view, a wife may refuse to cook meals or to do other household works, but on the other hand, the husband may refuse to give her permission to meet her relatives. And if both of them are restricted to such a crude legal relationship, an atmosphere of mutual understanding and bilaterial cooperation cannot develop between them.

Therefore, a wife should not take the household work as a disgrace to her. In fact, her active contribution to her own house work is the basic source of strength for the family system of the society. It is a great service, not only to her own family but also to the nation as a whole, because the betterment of the whole nation depends on a smooth family system. It is strange that when an air hostess serves meals to hundreds of strangers in an aeroplane, it has been taken today as a symbol of liberalism, progress and emancipation, but when a housewife renders much lighter services to her own family, it is deemed to be a disgrace or sign of backwardness.

The Western countries are facing today a terrible situation of family-break-down. Their leaders are mourning on this drawback, which is caused by the lack of mutual cooperation between husband and wife and their failure to determine the functions of the spouses according to their natural, biological and religious requirements.

In short, a wife is not legally bound to render the household services, however, it is advisable that she performs these functions as a measure of cooperation with her family and an honorary service to the society as a whole, for which she deserves great reward in the Hereafter.

But at the same time, the husband should always remember that the household work undertaken by his wife is not a legal duty obligated on her, rather, it is a voluntary service she is rendering for the benefit of the family. Therefore, a husband must always appreciate this goodwill of his wife and should not treat it as a legal claim against her. Moreover, he should not leave all the household works on her exclusively. The husband should provide her with servants wherever possible, and should himself assist her in performing these functions. It is reported in a number of authentic *ahadith* that the Holy Prophet (S.A.W) despite his great outdoor responsibilities, used to render many domestic services with his own hands, like milking his she-goats, washing his clothes etc. We do not find anywhere in his *Sunnah* that he ever ordered any of his wives to do such works. However, his sacred wives used to render these services voluntarily without any specific command from the Holy Prophet (S.A.W).

It is not correct that the books written on this subject stress upon the obligations of a wife only. In fact all the books of Islamic jurisprudence discuss the rights and obligations of both the spouses simultaneously. The husband is required not only to provide maintenance, but he is also required to treat his wife "fairly" as the Holy Quran has put it in express terms, so much so that the Muslim jurists have observed that a husband cannot travel for more than four months at one time without the permission of his wife. But unfortunately many Muslims are not aware of the teachings of their religion and, due to this ignorance, they commit errors in their behaviour towards their wives.

2

SAVING FOR BURIAL EXPENSES

Q *"Secondly, I see Muslims who save money to buy houses, cars, vacation packages, send their children to the best colleges, and afford the most elaborate Valimahs yet when Allah sends his angel of*

death to retrieve their souls there is no money in their savings account to pay for their funeral expenses. In fact most of the Muslims I have spoken to seem to believe it is the duty of the Ummah to bury its brother or sister or child in Islam. Is this true? Are we not asked to save for our funeral expenses?" (Ibid)

A This is not correct. The Muslims have been advised by the Shari'ah not to be involved in any kind of extravagance. Moreover, the Holy Prophet (S.A.W) has advised the Muslims that instead of spending all their money in their life-time, they should leave a substantial part of it for their inheritors, so much so that they cannot make any will for charitable purposes in excess of 1/3 rd of their property. The Holy Prophet (S.A.W) while explaining this rule of Shari'ah, has observed in the following words:

ان تدع ور ثتك اغنيا ء خير من ان تدعهم عالة يتكففون الناس

"To leave your inheritors well-off is better than leaving them in poverty looking to the hands of others." (Bukhari)

Therefore, one should never presume that it is the duty of Muslim brothers to bear the expenses of his burial etc., and he should spend whatever he has in his life time. The Muslim people are required to pay the burial expenses only when a person has died in a state of poverty leaving nothing behind. But it does not mean that one should exploit this obligation of the Muslims for his extravagance or his lavish expenditure during his life time.

3

IS EARNING A LIVELIHOOD AN OBLIGATION

Q And lastly, more and more Muslim brothers are marrying and cannot afford to support a wife. Their families either become a ward of the government or they experience a life of meagre subsistence. In fact we know of one sister whose husband was injured on his job. he was awarded a small sum of money on a monthly basis by the government. The money is not enough to maintain his family. Yet! although he is not disabled to the point where he cannot work - he refuses to look for a job to bring in additional income to support his family. He claims he is doing Allah's work since he is out to invite every person he meets to embrace Islam and will not withdraw from Allah's work for the dunya. Whose duty is it, then, to support his family? Or can the sister request a divorce based on her husband's inability to support his family. (Ibid)

Every Muslim is duty bound to earn livelihood for himself and for the

dependant members of his family. This is not a mundane duty only, but it is a religious obligation also. The Holy Prophet (S.A.W) has said:

طلب كسب الحلال فريضة بعد الفريضة

"To earn the lawful livelihood is a religious duty after the religious obligations (like prayers, fasting etc.)

Since the dependant members of his family are entitled to get maintenance from a Muslim head of the family, he cannot avoid his economic responsibilities on the pretext that he is engaged in religious work. He should provide his family with their necessary economic requirements and then he can devote the rest of his time to the work of Tabligh. If he fails to discharge his duty in this respect and the wife has no other source of livelihood, she can approach a Muslim court[1] for the dissolution of her marriage from her husband who does not give her the proper maintenance.

4

MARRIAGE WITH CHRISTIAN AND JEWISH GIRLS OR BOYS

Q *"When it comes to marrying a Christian or a Jewish girl or boy, the Muslims youths argue that the Holy Qur'an has allowed such a marriage. Since we are living in the midst of Jews and Christians, we pre-eminently need to know the correct and precise Islamic position in this respect. Please provide the guidance and oblige." (Dr. Zakaullah, New York)*

A The Holy Qur'an has never allowed the Muslim girls to marry a non-muslim boy, no matter whether he is a Christian or a Jew or a Hindu or a Parsi. However, the Holy Qur'an has allowed a Muslim boy to marry a Christian or a Jewish girl. But there are two important points which should always be kept in mind in this respect:

1. It is only the Christian and Jewish women that are allowed to be married by a Muslim. No woman of any other religion or belief is halal for a Muslim. The women who are Christian or Jew only by their names, and do not actually beleive in any religion, like a large number of people in the Western countries, cannot be termed as "Ahl-al-Kitab" (People of the Book). They are atheists and it is not allowed in Shairah to marry an atheistic woman.

1. In those non-muslim countries, which do not have shariah family courts, a committee of Ulema may be approached for the purpose of seeking a dissolution of a marriage on any ground recognized by shariah. A decree of dissolution granted by such a committee will be valid in shariah. (EDITOR)

2. Shariah has allowed the Muslims to marry a Christian or a Jewish girl only where there is no apprehension that the husband or his children may come under her influence in religious matters. In the early days of the Islamic history every Muslim was duly equipped with adequate knowledge of his religion and had an unshaken commitment to the Islamic principles. Therefore, there was no apprehension that he would be misled by any foreign influence. Rather, he was supposed to convince his wife in religious issues. Therefore, if a Muslim is fully confident that his marriage with a Christian or a Jewish girl will never affect the religious life of himself or of his children, then there is no bar against such a marriage. But if he is not so confident, then, he must avoid marrying a non-Muslim girl. Even in the days of the Sahabah (the companions of the Holy Prophet (S.A.W.) some people were not advised to marry a Christian or the Jewish girl for this very reason. (See 158:2/4, Musanif Ibn Abi Shaibah)

5

ADOPTION OF A CHILD IN ISLAM

Q *"In the secular legal system, adoption of a child by couples is lawful as we all know. Please elucidate the position of Shariah in this regard. How far such an adoption is permissible in Islam, and if so, what are the rights and obligations of the parties involved in such a situation?"*

(Yousuf Ghani, New York)

A Adoption of a child has no legal effect in Shariah. One can adopt a child for his emotional and psychological satisfaction. He can treat him as his own son in the matters of love, affection and general behavior. Adoption of a child to provide shelter to him is a virtuous deed which carries much reward in the Hereafter. But so far as the legal aspects are concerned, adoption has no consequence. The child should not be attributed except to the natural father, and not to the one who has adopted him. Even in the matter of *hijab* adoption has no effect whatsoever. If a male child is adopted by a woman, she will observe *hijab* from him after he reaches the age of puberty, unless she is related to him in a prohibited degree. An adopted child can marry a daughter of his adoptive parents, because she is not his real sister. In short, adoption does not create a new legal relationship which did not exist before.

All these rules are inferred from the principle laid down by the Holy Qur'an in this respect. The people in jahiliyyah used to treat an adopted child as the real one in all respects. The Holy Qur'an condemned this

practice and the following verses were revealed:

وما جعل ادعياءكم ابناءكم

ذلكم قولكم بافواهكم

والله يقول الحق وهو يهدى السبيل

ادعوهم لآباءهم هو اقسط عند الله

"And Allah did not make your adopted children your sons. That is only your words coming out from your tongues. And Allah says the truth and He guides you to the right path. Call them with reference to their (real) fathers. It is more just in the sight of Allah." *(Surah 33:V4)*

However, it should be remembered that although an adopted child cannot inherit from his adoptive father, but it is permissible, rather advisable, for him that he, in his lifetime, makes a will in favour of his adopted son. Through such a will he can bequeath upto one third of his property to his adopted child who cannot otherwise share his inheritance.[1]

6

MARRIAGE ON TELEPHONE

Q *A lives in the United States of America. He wants to marry B, a girl living in Karachi. A, for a number of reasons, cannot come to Karachi to marry her, nor B can go to U.S. unless she is proved to be the wife of A. How can A and B contract a valid marriage without meeting each other?*

Is it permissible for them under Shariah to contract marriage on telephone by pronouncing offer and acceptance?

A Nikah (marriage) cannot take place on telephone, because it is a necessary condition for a valid contract of marriage that at least two witnesses should be present at the time of marriage and should witness

1. Such a bequest to a non-heir is known as WASIYAH and must not exceed one-thirds of the estate after payment of debts.

both offer and acceptance. This necessary condition cannot be fulfilled in a telephone conversation.

However, if A wants to marry B without both being present at one place, he can authorize any one of his friends or relatives living in Karachi to contract his marriage and appoint him his agent to pronounce offer or acceptance on his behalf. If, for example he selects C to be his agent for this purpose, he should authorize him in the following words:

"I authorize you to contract my marriage with B, daughter of D, on a sum of. . . . as dower."

Then, at the time of marriage ceremony in presence of at least two male witnesses, the girl may pronounce her offer saying, *"I married A, son of E on a sum of. . . . as dower."* If there is a Qadi or a Nikah Khwan duly authorized by the girl, he can also pronounce offer in the following words:

"I gave B, daughter of D in marriage with A on the sum of . . . . as dower."

C, the agent of A, will say in reply, *"I accepted this marriage on behalf of A."*

The offer can also be initiated by C as an agent of A. In this case he will address B in the following words:

"Being a duly authorized agent of A, I marry A, son of G, to you on a sum of. . . . as dower."

In this case B will reply, *"I accepted this marriage."*

In both cases, it will be a valid contract between A and B, whereafter they will be treated as husband and wife duly wedded to each other according to Shariah.

7

CAN A WOMAN BE MARRIED FOR HER BEAUTY?

Q *"Some people insist that a Muslim, while selecting a woman for marriage should not pay any attention to her physical or facial appearance. He should only see whether she is a religious woman or not.*

In this respect a Hadith is often referred to, wherein the Holy Prophet (S.A.W.) is reported to have said,

"A woman is married either for her beauty or for her wealth or for her religious behavior. So you must try to choose the woman committed

to her religion."

They argue that the considerations of beauty and wealth have been condemned in this Hadith, while the consideration of religion has been confirmed and stressed upon.

Please explain whether this Hadith is authentic and whether the above mentioned point of view is correct according to this Hadith.

A The Hadith is authentic, but it does not mean that, when deciding to marry a woman, her physical appearance cannot be taken into consideration at all. The purpose of the Hadith is that it should not be the *sole* consideration.

Instead, her religious attitude should be given due importance. If a woman is very attractive in her appearance, but she does not care for her religious obligations or has a rebellious attitude towards them, she should not be preferred to a less attractive woman whose commitment to Islam is evident and who observes her religious obligations with sincerity and devotion.

However, if there are two women, both equally committed to Islam and equally observing the imperatives of Shariah, then, there is no bar on a Muslim if he prefers a woman who seems to him more attractive than the other.

In fact, one of the basic objectives of marriage, according to Islamic teachings, is that the spouses may run a chaste life and may fulfil their sexual needs with as much satisfaction as may help them refrain from indulging in an unlawful activity. This objective cannot be achieved unless they like each other, both in their appearance and in their inner qualities. That is why the spouses have been advised to see each other before entering into the pledge of marriage. The Holy Prophet (S.A.W.) not only allowed one to see the woman whom he wants to marry but emphatically recommended it for the Muslims. One of his blessed companions once told him that he had resolved to marry a woman from the *Ansar*. The Holy Prophet (S.A.W.) asked him if he had seen that woman. When the person replied in the negative, the Holy Prophet (S.A.W.) said to him: *"See her, it will help create a better union between you"*

(Tirmidhi)

It is obvious that merely seeing a woman cannot reveal anything about her except physical appearance. It is, therefore, evident that the appearance of a woman can be a valid consideration when deciding to marry her. Had it been prohibited to marry a woman for her beauty (of

course, in addition to her inner qualities), it would have been pointless to see her before marriage.

The correct position, therefore, is that the appearance of a woman is one of the valid considerations which may be kept in mind when deciding to marry her. But it should not be the only consideration, nor should it be preferred to her inner qualities including her commitment to religion.

8

THE USE OF LOOP AS A MEANS OF BIRTH CONTROL

Q *The question arises as to whether the use of the loop, which is inserted in the uterus of the woman, is permitted as a means of birth control. The effect of the use of the loop is summarised in the letter of Dr A E Suliman, an experienced and qualified gynaecologist.*

In some cases, the sperm and ovum are destroyed prior to fertilization. In other cases, fertilization takes place but the resultant fertilized ovum which takes the form of cellular material is prevented from becoming implanted in the inner wall of the uterus. It's the time of such expulsion of the fertilized ovum.

Mufti Jaleel Qasmi Sahib has expressed the view that the use of the loop in such circumstances is permissible although not encouraged, such view being based on the analogy of AZAL. A general medical practitioner has raised an objection to the effect that the cellular material which is so expelled contains life but then, in answer, the sperm and the infertilized ovum also contains life. Your considered FATWA on the matter would be greatly appreciated as soon as possible, and is required by the Jamiatul Ulema, Natal.

(M.S. Omar, South Africa)

A It appears from your question as well as the enclosed explanation given by the expert that the use of the loop may bring either of the two results:

1. It may prevent fertilization by destroying the sperm and the ovum prior to their interaction.

2. If the fertilization takes place, the fertilized ovum is expelled from the uterus by the loop. This expulsion takes place within one or two weeks after the fertilization.

In the first case where the loops acts as a preventive measure

against fertilization, it is similar to any other contraceptive and the rules regarding 'AZAL' (coitus interruptus) may be applied to the loop also, i.e. its use is permissible in Shariah in cases of individual needs, like the sickness or the weakness of the woman where pregnancy may endanger her health.

In the second case, however, the rules of 'AZAL' cannot be applied, because in that case it is not merely a preventive measure, but it expels the fertilized ovum from the uterus after conception. Therefore, it acts as a device to effect an abortion. Hence, the rules of abortion shall apply.

According to the Islamic rules, an abortion is totally prohibited, if it is effected after the completion of 12 weeks[1] after conception. But at an earlier stage, abotion is permissible only for medical reasons and other genuine needs.

As the loop expels the fertilized ovum within two weeks, its use cannot be held as prohibited totally. However being a device of abortion, its use is not advisable and it should be restricted to the cases of the real medical needs only.

1. Should read 120 days after conception, when the foetus has developed into a human being. Some contemporary jurists are of the view that the rule that abortion is totally prohibited after 120 days is subject to one exception - if the life of the mother is in serious danger, then an abortion may be effected to save her life. (EDITOR)

8

Economics

Page

1

EXCHANGE OF CURRENCIES & DISCOUNTING OF BILLS

I got your comments on our group's evaluation of Islamic banks and Mudarabah companies. The MBA project we are doing is in the second week of June, 1997. Your guidance would help us in presenting the true picture of an Islamic Financial Instititiion (IFI) at LUMS. It would be quite helpful if you answer following questions:

Q (1) Why cannot currencies be sold at rates different than the market or spot rate? How are currencies of different countries different than ordinary goods which can be sold at prices different than the market?

(2) Why is dicounting of bills of exchange in different currencies permitted when currency itself cannot be traded below the spot rate?

(3) Can one party in a 'promise to sell/purchase' agreement ask for a security, whether cash or any kind of collateral, from the other party?

(4) How can an agent's (agent being the bank) fee be determined if he is made responsible to collect the amount written on bill of exchange on behalf of it's client? Wouldn't such kind of agency fee or service charge become an excuse for charging interest? How can one prevent it?

(5) Is it injustice if two or more partners agree on a ratio of profit, not the loss, which is different than the ratio of capital contributed by each partner?

(6) Are the following rules correct according to Shariah:

a. It is permissible for the lessee to let to a third party during the lease period whether for the same rental or more, as long as the asset is not affected by the change of user.

b. It is permissible to stipulate in a contract of Istisna that price would be reduced by a specific amount per day upon delay in delivery by the seller.

(7) What steps can an Islamic Financial Institution take to prevent the concentration of wealth among the rich individual of a Muslim society?

A Here are the answers to your recent questions:

(1) If the currencies are of the same country, they cannot be sold at a rate different from their face value. However, if the currencies are of different countries, they can be sold on spot at whatever rate agreed upon

between the parties which can be different from the market rate. However, if the payment is deferred on either side, it must be in accordance with the market rate. This condition is put to restrict the use of this transaction to the genuine needs, otherwise it may be taken as a device to effect *riba* transaction. The details of the rules regarding the transaction of currencies are available in my Arabic book *Akham Al-Auraq Al-Naqdia* which has also been translated.

(2) The discounting of bills of exchange even in different currencies is not permitted in Shari'ah. The reason is that a Bill of Exchange stands for the amount of the bill which is a debt payable by a seller. If it is sold or purchased for cash, it means that two currencies are being exchanged where the payment at one side is deferred and I have already mentioned in answer to question No.1 that if the payment is deferred on either side, the price should not be different from the market spot rate.

(3) The promise to sell/purchase is merely a promise. It does not effect the contract of sale itself, therefore, no rights or obligations of a sale can arise out of a promise only. Hence no party can ask for security or a collateral for the fulfilment of a promise. Because the security or collateral is justified only where a liability or a debt has actually come into existence while in the case of promise no debt or liability is created. It is only an undertaking to sell/purchase a commodity in future. When the actual sale occurs on a deferred payment basis the debt will be created and at that time it will be justified to ask for a security.

(4) If the bank has been made an agent to collect the amount of a Bill of Exchange on behalf of its client it is permissible for the bank to charge a fee for this service. The fee may be determined by the parties on whatever basis they agree upon. However, it should not be tied up with the period of the maturity of the bill. With this condition this transaction will not, hopefully, be instrumental to charge interest.

(5) In a *Musharakah* contract the parties may agree on a ratio of profit different from the ratio of their investment with the only condition that a partner who in expressed terms, relieves himself from the liability to work for the partnership cannot claim a ratio of profit higher than the ratio of his investment, for example, if 'A' has invested 60% of the capital while 'B' has invested 40% the parties can agree that 'B' will get 60% of the profit and 'A' will get 40% of the profit. However, if 'B' has, in expressed terms, put a condition in the contract of *Musharakah* that he will never work for the enterprise, he cannot claim more than 40% of the profit.

(6.a) A lessee can sub-lease the property to a third party with the

permission of the lessor, if the rent charged by him from the sub-lessee is equal to the rent payable by him to the original lessor. This sub-lease is permitted with the consensus of all Muslim jurists. However, if the lessee charges from his sub-lessee a rent more than the rent payable by him to the original lessor, it is not permissible according to Imam Abu Hanifah, but it is permissible according to other Imams.

(6.b) It is permissible to stipulate in a contract of *Istisna* that price would be reduced by a specific amount per day upon delay in delivery by the seller. The contemporary scholars of Islamic Jurisprudence have allowed this type of contract on the basis of the following ruling given by the classic *Fuqaha:*

(وصح ترديد الأجر بالترديد فى العمل) كان خطته فارسيا بدرهم

أو روميا بدر همين (وزمانه فى ال) .... كان خطته اليوم فبدرهم

أوغدا فبنصفه . (ردالمحتار لا بن عابدين ص ٧٢ج٦)

(7) In fact the answer to this question requires a detailed treatise, but without going into details the following steps may be taken by the Islamic Financial Institutions to prevent the concentration of wealth among the rich of its society:

Firstly, they should maximise the use of *Musharakah* and *Mudarabah* instead of *Murabahah* or Leasing, because the real alternative to interest in a true Islamic economy is *Musharakah* and *Mudarabah* which paves the way for equal distribution of income among the members of the society and they are very competent and strong instrument diverting the flow of wealth from a few rich people to the common lot. Secondly, they should find out ways and means to finance the small scale trade and industry. For this purpose an Islamic financial institution should rise above the level of pure commercial and material benefits and should set their priorities in wider interests of the society of which they, themselves, are an inseparable part.[1]

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1. Mudarabah is a distinct class of partnership in terms of which the one party, called the rabbul maal, hands over capital to another, called the mudaarib, on the basis that the mudaarib trades with such capital and the resultant profits (if any) are shared between them in pre-agreed proportions (such as two-thirds to the rabbul maal and one thirds to the mudaarib).[1]

The essence of this class of partnership is that it is a partnership relating to profit only. The mudaarib is entitled to profit in accordance with the agreed profit sharing ratio by reason of his labour, and the rabbul maal is similarly entitled to profit as a return on his capital. It follows that ordinarily, in the absence of defined negligence and/or breach of contract, the losses of the partnership will be offset against accrued profits, and thereafter against capital. It also follows that the contract of mudaarabah will be void if the agreement

stipulates that the rabbul maal must work together with the mudaarib.[2]

Mudaarabah is a unique class of partnership in that it brings together both capital and labour and employs them productively in business. A person has the capital but not the skills and expertise, whereas another has the skills and expertise to conduct business but not the capital. There is therefore a genuine need to recognise such a partnership which was prevalent at the time of the Holy Prophet (SAW). He confirmed its validity and the noble companions (may Allah be pleased with them) transacted on the basis of mudaarabah. The jurists are accordingly unanimous (IJMA) in regard to its validity.[3]

The contract of mudaarabah itself is concluded by offer and acceptance, or by the use of words which indicate that the parties intend to conclude a contract of mudaarabah. For example, the rabbul maal says to the mudaarib: "Take this capital (e.g. R100,000.00) for the purposes of mudaarabah, and expend labour on the basis that the resultant profits will be shared equally", or the rabbul maal says: "Take this cash and treat it as capital, and the profits will be shared equally between us" and the mudaarib accepts the offer.[4]

Upon conclusion of a valid mudaarabah contract, the following legal consequences arise and attach to the mudaarib:

a) the mudaarib, in receiving the capital from the rabbul maal, is a trustee (AMEEN) in the sense that he is not ordinarily obliged to compensate the rabbul maal in the event of loss or destruction thereof.[5]

b) the mudaarib, in commencing his labours, is an agent of the rabbul maal in dealing with and disposing of the property because he does so on his (the rabbul maal's) instructions as the owner thereof.[6]

c) the mudaarib, if he makes a profit, shares therein by reason of his labour, and because the object of mudaarabah is to make a profit.

If, on the other hand, the contract of mudaarabah is void for any reason, then the mudaarib is entitled to remuneration for his labour equivalent to the market rate. If the mudaarib breaches a valid condition of the contract of mudaarabah, then he is strictly liable to make good any loss because he has dealt with the property of another without authorisation.[7]

The contract of mudaarabah may be general without any limitation as to duration, or class of business to be conducted, or place where such business is to be conducted, or otherwise as to the category of suppliers and merchants to be dealt with. The contract however may be limited as to any of those matters. The rule in this regard is that the rabbul maal may impose any condition in the contract which is beneficial to him, and the mudaarib is bound to observe such condition otherwise he will be in breach of contract. If the condition is of no benefit to the rabbul maal, then the condition itself will be invalid without affecting the validity of the whole contract.[8] (EDITOR)

1. AL-MUGNI, Vol 5, Page 134
2. RADDUL MUHTAAR, Vol 5, Page 645
3. BADAI-US-SANAI, Vol 6, Page 79
4. MAJALLAH, article 1405
5. RADDUL MUHTAAR, Vol 5, Page 646
6. HEDAYAH, Chapter on MUDARRABAH
7. HEDAYAH, Chapter on MUDAARABAH
8. MAJALLAH, Article 1407, Commentary of Allama Itasi (RA)

2

THE LEGAL PROFESSION

Q You are a Judge in the Federal Shariat Court and a well versed person in Islamic Law and concepts. Considering this background of yours I thought you could answer or help me out in following points:

1. Is the present profession of advocacy repugnant to the Islamic Judicial System, because in that you need not pay fee or hire a lawyer to conduct your case.

2. The same question with regard to legal consultancy/advisor.

3. Is it the govt. in an Islamic state who should provide full legal assistance in respect of any matter.

4. Can the doctrine of necessity be extended in the above case considering that legal system has gone complex or developed too much.

5. In view of above points is the profession of Advocacy etc. 'Halal' or 'Haram' under Islamic Law.

Sir, these are the points which are agitating in my mind. I hope sir, sparing some time you would throw some light on these points. I shall really be thankful to you for this kind gesture. (Muhammad Subhan Butt).

A 1 & 5. The profession of advocacy, in itself, is not prohibited. This is a service rendered to the client for which an advocate can charge a fee. However, this permissibility is subject to three conditions. Firstly, a Muslim advocate is not allowed to plead the case of a person whom he believes to be unjust. Therefore, if he knows that his client has committed an offence he is not allowed to plead for his innocence. The Holy Qur'an is very clear on this point where it says:

"And do not be an advocate for those who have committed breach of trust."

Nevertheless it is not impermissible for an advocate to plead for any concession given to the culprit under the law, for example, in the above case it is not allowed to plead for the innocence of an offender, however, it is permissible to plead for reduction of his sentence on the grounds of genuine mitigating circumstances. Secondly, it is not allowed for a Muslim advocate to help his client in claiming a right which is disapproved by the Shari'ah, for example, if a person wants to sue his opponent for recovering usury or interest, a Muslim advocate cannot plead his case to that extent. Thirdly, a Muslim advocate is not allowed to use prohibited means to

advance the case of his client like false statement, forged documents etc. Subject to these three conditions the profession of advocacy cannot be termed as repugnant to the injunction of Holy Qur'an and *Sunnah.*[1]

2. Whatever has been stated above with regard to the advocacy is equally applicable to the profession of legal consultancy.

3 & 4. There is no doubt that one of the basic responsibilities of Islamic state is that it provides justice to its citizens without undue cost. It is also advisable for it to provide full legal assistance to the people when they need it to acquire justice. However, if the resources of an Islamic state are not sufficient to provide this facility free of charge private legal consultants and practitioners may render their services by charging a fee from their clients but of course all these are subject to the three conditions already explained in answer to Question No.1.

3

PERMISSIBILITY OF CERTAIN FINANCIAL CONTRACTS

. *I have attempted to give examples of some financial contracts which can be used for various purposes - for risk reduction or hedging and speculation involving options, futures, and swaps; and direct and indirect investment in equity. Kindly let me know to what extent these are permissible under Islam.*

4

FUTURES CONTRACTS ON STOCK EXCHANGE

1. An example of a future contract in shares:

i) Two individuals, A and B enter into a contract on 1st January 1996 under which A would sell a share of company X at a price of $100 to B after an expiry of six months. B has an obligation to purchase at this price irrespective of the market price on 31st June 1996.

ii) If the object of transaction is any commodity, or gold, or silver, or currency and not share as in the above three cases, in what way the validity or otherwise of the contract is affected?

Please note that the non-transferability of rights and obligations severely limits the possibility of speculation on Futures Exchanges. A

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1. On the contrary, a Muslim Lawyer who represents a client, whose complaint is just, will be rewarded if he seeks to achieve justice for his client and recover his or her legitimate entitlement. (EDITOR)

commonly held belief is that future contracts are prohibited when they are used for speculation. Does this imply that futures contracts are permissible when these are used for hedging?

A leading Islamic Bank's Annual Report shows that the bank entered into futures transaction for hedging its foreign currency risk. One view is that such hedging may be justified in view of extreme volatility in currency markets. (in my correspondence with a top executive of the said bank, I was given the reference of a book, Islamic Law and Finance by Chibli Mallat, I still do not have access to this book).

2. An example of an option contract in shares:

i) Two individuals, A and B enter into a contract on 1st January 1996 under which A grants a right to B without any obligation on B's part. B under the contract, gets a right to purchase a share of Company X from A any time on or before 30th June 1996 at a price of $100 (irrespective of the market price on the day of purchase). B, however, does not have any obligation to purchase.

A accepts a consideration of $5 from B for granting him his right without obligations. This is called a call option in shares.

ii) A and B enter into a contract on 1st January 1996 under which A grants a right to B without any obligation on B's part. B, under the contract, gets a right to sell a share of Company X to A at any time on or before 30th June 1996 at a price of $100 (irrespective of the market price on the day of purchase). B, however, does not have any obligation to sell.

A accepts a consideration of $5 from B for granting him this right without obligations. This is called a put option in shares.

iii) A and B enter into a contract on 1st January 1996 by which A sells 100 shares of Company X at a price of $100 per share. The transaction is settled with exchange of cash for the shares. A also grants a right to B under which B can sell back the shares to A on the expiry of six months, that is, 30th June 1996 at a price of $120 per share. This right however, is cancelled if the price of the share increases beyond $120 and remains at that level for 21 consecutive days before 30th June 1996.

Unlike the previous two instances of transactions in pure options, the above is a case of option as an additional feature of an equity sale and purchase.

iv) If the object of transaction is any commodity, or gold, or silver, or currency and not share as in the above three cases, in what way the

validity or otherwise of the contract is affected?

3. An example of an Islamic swap used by some Islamic banks:

Two banks enter into an agreement to exchange deposits for a period of six months in different currencies on 1st January 1995 at the prevailing exchange rate. Bank A exchanges Rupees 30 million with Bank B for US Dollars one million, and the Rupee-Dollar exchange rate prevailing on the date is 30:1. During these six months, each bank utilizes the deposits it received at its own risk. At the end of six months, Bank A pays back one million dollars to Bank B and receives Rupees 30 million from it irrespective of the Rupee-Dollar exchange rate prevailing on June 30, 1995, for example, the Rupee-dollar exchange rate might have become 35:1 or 25:1 on June 30, 1995. Is this contract Islamically permissible?

4. Examples of direct and indirect investment in equity:

i) Company A raises funds by selling shares and interest-bearing bonds and invests all funds in predominantly halaal and profitable activities. Is it permissible to purchase shares of Company A for an individual?

ii) Company B raises all its funds by selling shares and invests all its funds in shares of Company A above and similar companies. Is it permissible for an individual to purchase shares of Company B?

iii) Company X sells financial securities on which it promises dividends at a rate of 10 per cent on its total sales during the year. Is it permissible to purchase these securities where dividends are paid as a predetermined proportion of sales revenue and not profits?

Answers are as follows:

1. i) This is an example of a futures transaction. The futures transactions as in vogue in the stock and commodities markets today are not permissible for two reasons: firstly, it is a well recognized principle of Shari'ah that sale or purchase cannot be effected for a future date. Therefore, all forward and futures transactions are invalid in Shari'ah. Secondly, because in most of the futures transactions delivery of the commodities or their possession is not intended. In most cases, the transactions end up with the settlement of difference of prices only, which is not allowed in Shari'ah.

More detailed discussion on the Shari'ah aspect of futures transactions may be found in my Arabic book; *"Discussions of*

Contemporary Juristic Issues" under the heading *"Futures Contracts in Commodities"*.

ii) As futures transactions are not permissible, no rights or obligations can emanate therefrom. Therefore, the question of transferring these rights and obligations does not arise.

iii) Futures transactions, as explained earlier, are totally impermissible regardless of their subject matter. Similarly, it makes no difference whether these contracts are entered into for the purpose of speculation or for the purpose of hedging.

2. i, ii, iv, & v.) According to the principles of Shari'ah, an option is a promise to sell or to purchase a thing at a specific price within a specified period. Such a promise in itself is permissible and is morally binding on the promisor. However, this promise cannot be the subject matter of a sale or purchase. Therefore, the promisor cannot charge the promisee a fee for making such a promise.

Since the prevalent options transactions in the options market are based on charging fees on these promises, they are not valid according to Shari'ah. This ruling applies to all kinds of options, no matter whether they are call options or put options. Similarly, it makes no difference if the subject matter of the option sale is a commodity, gold or silver, or a currency; and as the contract is invalid *ab-initio,* the same cannot be transferred.

iii) This contract has two aspects; Firstly, if the option of selling back the shares to A has been made a precondition of the original sale transaction, the whole transaction will be invalid because, according to Shari'ah, a sale transaction cannot accept such a condition. Secondly, if the option is an independent promise without being a precondition for the original sale, no fee can be charged for such a promise as mentioned earlier. Although a complimentary promise of this kind is permissible in Shari'ah, it cannot serve the purpose of the option market.

3. It is one of the principles of Shari'ah that two financial transactions cannot be tied up together in the sense that entering into one transaction is made precondition to entering into the second. Keeping this principle in view, the swap transaction referred to in the question is not permissible because the deposit of one million dollars has been made a precondition for accepting the deposit of 30 million rupees, since both the parties will use the deposits for their own benefit, they are termed in Shari'ah as loans (Qardh) and not as trust (Wadee'ah). Therefore, advancing one loan has been made a precondition for receiving another, which means that two

financial transactions are tied up together.

This is my initial opinion about this transaction. However, it needs further study and research.

4. i) If Company A raises funds by issuing shares and interest bearing bonds and invests all funds in predominantly Halaal and profitable activities, the permissibility of purchasing shares of such a company depends on four conditions:

a. All the business activities of the company should be Halaal.

b. The shares of such a company have to be purchased after it has acquired tangible assets like machinery, buildings, raw materials or stock in trade.

c. If it becomes evident from the income statements of the company that a part of its income consists of interest given by the bank on its deposits, that proportion of the dividend must be given in charity.

For example, if the total profit of the company is $100 and 5% of it has accrued through interest received on bank deposits, then 5% of the dividend must be given in charity.

d. The shareholder should express his disagreement over depositing surplus funds in an interest bearing account and raising funds through interest bearing loans. A preferable method would be to object against such interest bearing transactions in the annual general meeting of the company.

If the four conditions are strictly fulfilled, it is hoped that purchasing shares of such a company will be permissible in Shari'ah.

A possible objection which may be raised against this ruling would be that because the company had raised a considerable amount of its funds by issuing interest bearing bonds, a substantial part of its funds is impure according to Shari'ah; therefore, it should not be permissible to participate in such a business. This objection may be refuted on the ground that although taking an interest bearing loan is strictly prohibited in Shari'ah, yet the effect of this prohibition is that the persons responsible for taking such loans will be committing a sin. However, the amounts so borrowed are treated by the Shari'ah as their own. Although they will be liable to punishment in the Hereafter, the money borrowed comes into their ownership and anything purchased by that money will not be treated in Shari'ah as Haraam.

Therefore, if the capital raised by the company consists of some

amounts borrowed on interest, it will not render the whole capital impure.

ii) If the four conditions mentioned above are fulfilled it will also be permissible to purchase the shares of Company B which has invested all its funds in the shares of Company A.

iii) It is necessary for the permissibility of Musharakah that the profits of the joint venture are distributed among the partners on an agreed proportion of the actual profit and not in proportion to the sales revenue. Therefore, it is not permissible to purchase the securities issued by Company X.

5

THE ACCOUNTING PROFESSION

Situation 1

Q *(a) The client hands over his bank statements to the accountant. From the bank statements the accountant records any interest charged by the bank or credited by the bank to the client.*

(b) What is the position of the auditor who does not himself make the entries but merely checks to see if they are correctly recorded and reports thereon. The report of the auditor is to the shareholders and not to the bank who may also use the financial statements to assess the financial position of the business.

It should be noted that the transactions of interest have already been concluded by the bank and the customer. The historical information is then handed over by the customer to the accountant for the purpose of compiling books of accounts. These books of accounts are necessary in order inter alia to submit proper tax returns to the revenue authorities in terms of the taxation laws of the country. The question arises whether the accountant commits a breach of Islamic Law when he compiles the books of account. Is he regarded as scribe / writer of interest in a situation where he is not a party to the transaction of interest itself?

Situation 2

An accountant is working for a company. The company charges its debtors interest on their overdue accounts. The accountant is instructed by the directors, as part of his functions, to make appropriate entries in the records of the company in terms of which interest is charged on certain overdue accounts.

The question arises whether it is permissible in Shari'ah for such an

accountant to:-

(2.1) become involved in this manner in the charging, preceding and execution of interest on overdue accounts.

(2.2) remain employed with such an employer who charges interest on overdue accounts.

(2.3) receive a salary which is considered as halaal in Shariah from such a company, a small portion of whose income is represented by interest collected from debtors.

Situation 3

The accoutant working for a company writes out the cheques of the company. At times the amount recorded on the cheque includes an amount for interest.

(3.1) What is the position of the person who issues out such cheques?

(3.2) Also what is the position of the signatories to such cheques?

It must be noted that the accountant himself was not an original party to the transaction of loan which gave rise to the interest obligation.

In certain circumstances, even the signatory was not an original party to the transaction.

Situation 4

A motor vehicle salesman sells a vehicle to a customer. The customer finances the vehicle through the bank upon which he pays interest. The salesman in most instances has to assist the customer in completing the application for finance to the bank by filling in details on behalf of the customer. Some application forms also have a place for the signature of the person who assisted the customer in completing his application. Will this assistance to the customer be impermissible? Does the salesman also become a witness to this interest transaction merely by assisting to complete the application? It should be noted that the financing transaction is distinct from the sale transaction and it is solely between the customer and the bank.

Situation 5

Advising on financial options

A client comes to the accountant seeking advice of the best option with regards to undertaking a certain business venture or the acquisition / purchase of an asset. Among the various options which the accountant advises him is the option of financing via a bank whereupon he will be

charged interest.

(5.1) What is the position of advising with regards to such an option?

(5.2) If the client is a non-Muslim, will it make any difference?

(5.3) What is the position if the bank leases the asset and profit/rental is based on a fluctuating rate of interest?

Situation 6

For the purpose of reducing the client's taxes, various schemes are adopted. A simple practical example is where several persons (most often immediate family members) are made partners in the business. Part of their profits are accumulated in the business as further investments. For tax purposes these investments are reflected as "loans" from the respective people. Similarly, the net profit that is due to them on these investments is also reflected as "interest" to such people. In reality there is no loan or any interest. It is in fact the capital introduced and profit paid. These are just merely terms adopted in order to save taxes and to comply with the taxation laws of the country. What is the position of the accountant with regards to the recording of such "interest in the light of the aforementioned hadith?

It must be noted that these are fictituous records whose source is profit or rentals.

Situation 7

A person working for a non-Muslim company invests surplus funds on instruction, in interest bearing securities. What is his position in relation to the said hadith?

Situation 8

In South Africa most investments have some element of interest particularly those controlled by non-Muslims. As an example a syndicate of 50 people may purchase a property. The property is controlled and administered by non-Muslims and a small portion of the income may be in the form of interest - probably less than 5%. If one disposes of the proportion of interest attributable to him, will he be absolved? Similarly, how would one handle investment in a listed company on the Stock Exchange which is engaged in Halaal activities but may be involved in payment or receipt of interest as well.

Further Questions

1. With regards to those situations which clearly fall under the prohibition of recording interest, is there any way out of this by avoiding the

prohibition and still getting the work done?

2. If the client's business activities are mostly of a nature which the Shariah has declared forbidden, such as he sells liquor, or trades in meat not slaughtered according to Islamic rites, can the Muslim accountant undertake to do his books?

3. A Muslim accoutant works for a non-Muslim company which deals generally in Halaal merchandise, but also sells some Haraam items, such as liquor, etc. Is he committing any Shari' violation in recording the transactions pertaining to the Haraam items?

4. Is it permissible to work as an accountant or auditor for the revenue authorities of a country which is responsible for levying and collecting taxes?

5. Is it permissible for a Muslim accountant to enter into a partnership / association with a non-Muslim acountant?

6. What advice can you give to accountants in general pertaining to their profession?

(Muhammad Shoaib Omar, South Africa)

A It is true that according to a well-known hadith those who invoke the curse of Allah with regard to a transaction of *Riba* (interest or usury) includes a person "who has written the interest". However, this *Hadith* refers to the scribe of the transaction i.e. a person who has written an agreement or prepared the document to evidence the transaction. It does not include a person who was not involved in the transaction itself in any way, but while preparing the accounts of a person, has come across reference of the *Riba* transaction and has recorded it as an event which already happened without his involvement. This is how the scholars have interpreted the *Hadith.* To quote Hafiz Ibn Hajar:

هذا أنما يقع على من اوطأ صاحب الربا عليه، فاما من كتبه أوشهد
القصة ليضهد بها ء على ما هى عليه ليعمل فيها بالحق فهذا جميل
القصد لا يدخل فى الو عيد المذكور، وأنما يد خليقيه من أعان صاحب
لربا بكتابته وشهادته. (فتح البارى ٣١٤ : ٤)

"This (the curse of Allah) is applicable only to a person who has supported the relevant person in the transaction of Riba being

agreeable to it. However, if a person who has written the interest as matter of fact or has witnessed the occasion to testify the event as it occurred to facilitate a just action about it, then this is a good intention and is not covered by the warning mentioned in this Hadith. The reference in this Hadith is only to a person who has helped the relevant party in the transaction of Riba by writing its agreement or being a witness to it."

Al-Ubbi, the famous commentator of the Sahih of Muslim has explained the *Hadith* in the following manner:

والمراد بالكاتب كاتب الوثيقة ، وبالشاهد المستحمل ..... وأنما
سوى بينهم فى اللصنة لأن العقد لم يتم الا بالمجموع . (شرح الأبى
٤ : ٢٧٩)

"By the word "writer of Riba" the Hadith intends the scribe of the documents evidencing the transaction of Riba, and by the word "witness" it means a person who attended the occasion to become a formal witness in support of the transaction... The Holy Prophet (S.A.W) has held them all as equal in sin because the transaction took place with their joint efforts."

It is evident from these references that it is the writing of the document of *Riba* which invokes the curse of Allah and not its subsequent recording in a statement of the facts already happened. Therefore, the case of an Accountant of a firm or a company is different from the person who is directly responsible for the operation of interest. So far as the Accountant is not involved in initiating, proposing or helping in the transaction itself, he will, hopefully, not invoke the curse of Allah by merely recording the transaction in the books of account or in a financial statement. As a matter of precaution a Muslim should as far as possible avoid this type of recording also, however, it does not fall in the category of the clear prohibition.

In the light of the above discussion all your questions are perhaps answered. However, for the purpose of more clarity I give you a brief reply to each question seriatim:

1. In both situations (a) and (b) the Accountant does not provide any help to the transaction itself, rather he records the facts as they occurred or checks the correctness of their recording. Therefore, it does not directly fall within the ambit of the warning of the Hadith.

2. So far as the Accountant is not involved in charging interest, claiming it from the debtor or pursuing him for that matter, merely making entries in the books of account will not make him liable to fall within the ambit of the prohibition stipulated in the *Hadith.* Unless the major part (at least 51%) of the company is *haram* it is not prohibited to draw salary for permissible services rendered to that company.

3. If the cheque is intended to be written or issued exclusively for the payment of interest with a clear statement that this should settle the amount of interest due on the issuer of the cheque, it is not permissible for any person to write or issue such a cheque. However, if the cheque is issued for the settlement of different liabilities of which interest is also a part then the issuance or writing of such a cheque cannot be termed as absolutely prohibited. This applies to both issuer and the signatories of the cheque.

4. Of course, any assistance provided to the customer for obtaining an interest bearing loan, including the filling of the application form for the loan, is not permissible according to *Shariah* and it does fall within the scope of the warning of the *Hadith.*

5. A Muslim cannot advise any one to opt for a financing based on interest. According to the most authentic view, entering into a transaction of *Riba* is prohibited, no matter whether the opposite party is Muslim or non-Muslim. Therefore, the above ruling is applicable to that situation also where the client is non-Muslim.

The ruling about the leasing transaction will differ from case to case. The mere fact that the rental in a lease contract has been based on the market rate of interest does not render the transaction unlawful. However, there are certain other conditions which must be fulfilled for a valid lease transaction that cannot be summarized in this letter.

6. It is the essence of the transaction only which is more important in *Shariah* and not the nomenclature. Therefore, if investment is named as "loan" or the profit is termed as "interest" it will in reality be neither loan nor interest and therefore will not render the transaction unlawful. Specially, when this terminology has been adopted to avoid or reduce taxes. However, if the word "loan" is replaced by the word "finance" it will be more appropriate according to *Shariah,* while no change is required in the word "interest" because in a wider economic sense profit is included in interest and the word "profit" can be used in that sense without being a false statement. In view of the above there is no problem if an Accountant records such amounts as interest or loans.

7. As mentioned earlier, direct involvement of a Muslim in a transaction of interest is prohibited and comes under the purview of the above *Hadith*. Therefore, it is not permissible for an employee of a non-Muslim to invest his surplus funds, on his instruction, in interest-bearing securities, because in this case the employee works as an agent for the employer which is a direct involvement in the transaction of *Riba*.

8. If the interest is not among the main commercial activities of the syndicate, rather it has accrued through interest-bearing deposits of the surplus funds, it has the same status as that of shares of joint stock companies. Therefore, it is permissible for a Muslim to become a part of this syndicate provided that he tries his best to persuade the syndicate not to be involved in any transaction of interest, and that the proportion of the interest in the aggregate income of the syndicate is given by him to charity without an intention of gaining *Thawab* through it.

1) I have already highlighted the areas of prohibition and the areas where the *Shariah* has given a leeway but where there is a clear prohibition there is no option for a Muslim except to abide by it. However, if a person is forced by his personal circumstances to commit a prohibited act he should turn to Allah in repentance and seek His forgiveness.

2) If most of the activities of a business are *Haram,* a Muslim should not take up the work of that business.

3) The answer to this question is analogous to the answer to question No. 1 i.e. so far as a Muslim is not involved in a prohibited transaction directly, merely recording that transaction in the books of account is not *Haram.* However, a Muslim should avoid it also as far as possible.

4) It is not impermissible to work as an Accountant or Auditor for the revenues authorities of a country which is responsible for levying and collecting taxes.

5) So far as the terms of partnership are in conformity with rules of *Shariah* and the work of accounting undertaken by the partnership is not violative of the injunctions of Islam, there is no bar against entering into a partnership with a non-Muslim accountant.

6) My advice is to abide by *Shariah* in every walk of life.

6

RIBA, ITS MEANING AND APPLICATION

Q Respectable Mufti Saheb: Kindly forgive me for intruding on your precious time and specially during the Holy Month of Ramadan when you will be too busy. Also please forgive me in addressing this letter in English as perhaps I may not be able to express myself more clearly in Urdu.

You have been making research on various Islamic laws and principles which remain not clear in minds of people like me who have no knowledge or study of matters. As a learned Scholar and having vast experience and knowledge of both Islamic Laws and practices of modern period, I hope to get a reply of my query from you. Matter is the same old one - What is the position of Bank interest or profit - by whatever name it is called according to Shariah. To express whatever I understand I give below my feelings:-

1. Authentic definition of 'Riba' which has been declared by Allah and Holy Prophet (S.A.W) in Qur'an as "Haram"?

2. As far as I can see the charges of profit or interest one expects to get in return of his providing money to a needy person to fulfill his requirement of daily needs in the absence of any source to fulfill these is 'Riba' but any such return on money used for business, to earn more money, should not come under the definition of 'Riba'.

3. Generally it is said that if rate of profit is fixed it comes under definition of 'Riba' and becomes 'Haram' but if it linked with profit earned, it is not 'Riba'. In my humble opinion this position is different. For example 'A' has got Rs. 100,000/= and he constructs a shop and gives it on fixed monthly rental for business. Or if he gives Rs. 100,000/= in cash for another business. What is the difference as far as 'A' is concerned. He is parting with his money, in one case he is giving it in kind and in another case in cash. Why return in both the cases be distinguished? Shop's rent is not dependent on profit or loss to the Shopkeeper. If rent paid for shop is 'rental for shop why fixed return on cash is not 'rental of money'?

This letter is just to clarify the position and correct my thinking and in no way to convert **Haram** *into* **Halal**. *After all after 15 Centuries, our concept should be clear at least on basic principles of our faith and we should not find excuses for justification of our (mis) deeds.*

I shall be grateful to have your considered opinion for my guidance

at your earliest convenience.

(M.A. Siddiqui, Operations Director, Matiari Sugar Mills Limited)

A I received your letter dated 27th January 1997 and apologize for the delay in replying it. It was due to my overwhelming involvements both here and abroad. I hope you will forgive me for this delay. The questions you have posed have been discussed thoroughly in a number of books written on the subject both in Urdu and English. If you wish to benefit from Urdu writings I would advise you to read the following books:

" The Questions of Interest : Mufti Shafei (R.A.) "

" Islam & Modern Business : Mufti Taqi Usmani "

You may also benefit from the book of Dr. Anwar Iqbal Qureshi, titled *" Islam and the Theory of Interest "*.

I think if you want to be very clear on this point you should at least study these books. However, I am giving here very brief answers to your questions:

1) The legal definition of any prohibited act is seldom given in the Holy Qur'an itself. For example, wine has been prohibited but no definition of wine has been given. Similarly, adultery, telling lies, back-biting and bribery have been prohibited by the Holy Qur'an but the definitions of these acts have not been provided. Reason for it is that all these concepts were too clear in the minds of the addressees to need any such definition. The same is the case of *Riba*. The concept of *Riba* was widely recognized among the addressees of the Holy Qur'an and it is that concept which is reflected in the legal definition provided for *Riba* either in the *Hadith* or in the later literature of Islamic jurisprudence. According to this definition any transaction of loan where the payment of an additional amount on the principal is made conditional to the advance of such loan is called *Riba*.

2) There is no distinction in *Shariah* between advancing a loan to a needy person or advancing it to a business concern. The principle is that the person who advances money to another person should clearly decide whether he wishes to assist him or he wants to share in his profits. In the former case, he should withdraw from any claim of additional amount (in the form of interest) while in the latter case he should share his loss also. It is not permitted by *Shariah* that he claims profit but does not agree to share his loss.

Another point which needs attention here is that the distinction between a needy and a rich person in commercial matters is totally

irrelevant. If a Shopkeeper sells a commodity to a poor person with a margin of profit which is not excessive nobody can say that this transaction is *Haram* because of the poverty of the purchaser. One can say that it would be more advisable for the Shop Keeper to give him the commodity either as a charity or at cost without charging a profit but it cannot be said that the marginal profit charged here is not *Halal.* If charging an additional amount on a loan is not in itself *Haram* then the same analogy should have been applied here meaning thereby that if a creditor charges a marginal interest on the loan he has advanced to a poor person it should not be condemned or declared as *Haram,* but even the modernists who hold the commercial interest as *Halal* admit that this kind of transaction is *Riba* and prohibited by the Holy Qur'an. It proves that the basis of the prohibition is not linked to the poverty of the debtor. Had it been so, charging profit from a poor person would also have been declared as *Haram.* Therefore, the only basis for distinction between a sale and a transaction of *Riba* is that the former relates to commodity while the latter relates to money.

3) There are several differences between interest and rent. The basic principle of *Shariah* is that profit is justified where a person has undertaken the risk of the thing given to another person. In a transaction of loan, after advancing money, the creditor does not take any risk of the money because if the money is lost in the hands of the debtor after he has taken delivery thereof the debtor is bound to repay the loan. As the creditor did not take any risk of it, therefore he cannot charge additional profit thereon. While, in the case of a property leased out to the Lessee, the Lessor has taken the risk of the property, If the property is destroyed, he will bear the loss, therefore, it is justified for him to charge rent from the Lessee. Another difference is that the property is always subject to depreciation while money does not depreciate. Therefore, charging of rent in the first case is justifiable while it is not so in the later case.

I hope that these brief answers will at least explain the basic concepts. However, for greater details you should study the books I have referred to above.

7

DOLLAR JET GAME : GAMBLING

Q There is a system called "Dollar Jet". Its procedure is as follows. This system is world wide and thousands of people are participating in this game. Please let us know whether it is lawful in Shari'ah.

RELAX AND GET RICH!

Gambling is expensive, but there's a recipe for success.
With it, you can earn capital assets of
US$ 30,000 (Thirty thousand)
without any financial engagement on your part in 4-6 weeks
This is made possible by the DOLLARJET SYSTEM

How does this system work?

The DOLLARJET SYSTEM is neither a lottery nor a game of chance for which you have to buy tickets, but is based on a logical arithmetical system which, consistently followed, leads to large gain for the participants.

Everyone actively participates in the DOLLARJET system and initiates his own personal circle of players. It is this activity that not only gives you the chance, but the certainty of winning!

Lets assume you play along:

For your chance of winning $ 30,000, you first need a sum of $ 90 distributed as follows:

1. You buy this letter from the player listed in the fifth position for $ 30.

2. You pay $ 30 to the player listed in the first position by postal order (indispensable for correct procedure).

3. You pay $ 30 by postal order or cheque or cash to Commerce Control AG (CCI). A-1121 Vienna, Box 67.

4. After following Items 2 & 3, send the proofs of payment (item 2) with the necessary advance payment (item 3) and the legibly completed list of names to CCI Vienna.

You will be sent 4 letters from CCI, in each of which you will be entered in fifth place in the list of the addresses. The player in first place on the list sent in by you will on the other hand be omitted after he has received # 30, not only from you, but from 1.023 other players, provided all other players have correctly followed the instructions.

You now sell these four new letters for $ 30 each to four new acquaintances or relatives. You earn $ 120. You thus not only recover your outlay but an additional $ 30 for postage and telephone costs for your acquisition of members.

You have thus recovered your entire stake!
The four new participants now follow the rules just like you and now receive four letters each.

You are thus in fourth position in 16 letters.
Sixteen new players again receive four letters.

Then in second position in 256 letters and finally in first position in 1,024 letters.

Now every new purchaser of letters in which you are listed in first position remits $ 30 to you.

You receive $ 30, 720 without financial engagement on your part!

A Participating in the play "Dollar Jet" is *(Haram)* unlawful, because it is a gambling. At the very outset the sponsors have indicated that it is gambling by saying "Gambling is expensive, but there's a recipe for success". Any person who spends $ 90 is actually indulging in gambling because the return is uncertain and may be any amount between zero dollar and 30,000 dollars. The mechanism suggested by the sponsors (CCI) is contingent upon the fact that all the forms will be sold as contemplated and thousands of persons will purchase them at the given price. The expected return is all imaginary and the person receiving the forms may not be able to sell even one form and his investment of $ 90 will be lost. Hence, it is unlawful in Shari'ah. Participating in this play is unlawful if anyone has already spent $ 90 and has received money in excess of $ 90 is also *(Haram)* and illegal property. He should return this money to its lawful owner or his heir and if this is not possible, this should be given in charity without expecting any reward (Thawab). Allah knows best.

8

INHERITANCE OF A RUNNING BUSINESS

Q *"Yousuf has a moderate sized business. Two of his sons assist him full time in the business. Two daughters are married. Yousuf passed away. The estate is not wound up immediately. Yousuf's two sons continued with the business. Finally after ten years it is decided that the estate should be wound up and each person given his/her respective share. In the meantime, since Yousuf's demise the business which was worth at Rs. 1,000,000/- is now worth two million.*

1.1 From what amount will the shares be calculated? Will the heirs who are not in the business be regarded as sleeping partners, whose capital was employed for the ten years after Yousuf's demise, and therefore be entitled to a share from the 2 million, or will their shares be calculated only from the Rs. 1,000,000/-, and be regarded as an Amanat in the possession of the two brothers, in the business, for the past ten years?

1.2 Will it make any difference if the heirs out of the business had been demanding their shares constantly over the past ten years but no

attention was paid by those in the business (i.e. will the mas'ala be any different in this situation compared to the situation where, after the demise of Yousuf, no heir spoke any word about their shares on the inheritance, and the first time this matter is touched on after ten years)?

1.3 What will be the mas'ala if the shares were worked out immediately upon the death of Yousuf, but the heirs running the business did not relinquish control and continued to run the business for the next ten years, without having paid out of the shares of the other heirs, despite having undertaken to do so upon the death of Yousuf?

2.1 Is the mas'ala in the following situation the same, one partner "walks out" of the business without taking anything, and after ten years demands to be given his shares. Will he be entitled to his share from the value of the business at that time "walking out" or the present value ten years later? (M.Ilyas Patel, Isipingo Beach South Africa)

A It is a mandatory obligation of the heirs of a deceased person that immediately after his death they divide all his estate among themselves according to the shares prescribed by the Shari'ah. It is very unfortunate that most of the Muslims today do not comply with the rules of Shari'ah in this respect, and their negligence leads to serious disputes between the heirs of the deceased, and by the passage of time the problems become more complicated.

In the instant case it was the duty of the two sons of Yousuf that they distribute the estate between the legal heirs of their father or at least they should have affected a settlement with them, either by purchasing the shares of the other inheritors in the business, or by affecting a partnership with them, or by getting their permission to continue with the business on specific terms and conditions. If they have not done so, as it appears from the question, then it was not permissible for them to continue with the business and to use the capital of other inheritors for their own benefit. Therefore, all those profits which have accrued against the shares of other inheritors are not *Halal* for them. They can enjoy the profits accruing against their own shares, but they have to surrender all the profits relatable to the shares of the rest of the heirs according to their respective entitlement according to Shari'ah.

It does not make any difference whether the rest of the heirs had demanded their shares or not, because it was the duty of these two sons either to pay the share of each inheritor in the business or to make a settlement with them, and it was not lawful for them to use their shares without their permission.

However, it will be advisable for the benefit of both of the parties that they effect a compromise between them by taking these two brothers as active partners of the business and treating the rest of the heirs as the sleeping partners. In this case, an additional proportion of the profit may be allowed to the working partners against their labour, while rest of the heirs get lesser proportion of the profit as a sleeping partner generally does.

In short, the standpoint of the two sons running the business that the shares of other inheritors must be calculated only from one million is not acceptable, neither from the point of view of Shari'ah nor on the basis of justice and equity. The general principle of Shari'ah in this case is that they deserve only that part of the aggregate profits which relates to their own shares of inheritance, and the rest of the profits should be surrendered to each of the inheritors according of his entitlement in the inheritance. However, both the parties may effect a compromise by treating the business as partnership between all the inheritors, whereby the proportionate profit of the two working sons may be increased visa-a-vis the other partners on account of their labour. Such a compromise will be more advisable because it seems to be more equitable keeping in view the circumstances referred to in the question.

The case of a partner who walks out of the business without taking anything is different from the case of inheritance, because such a person has terminated the contract of partnership through his own free will. Therefore, he is entitled to those profits only which have accrued upto the time of the termination of the partnership[1]. He was entitled to get these profits at the time he left the business, but his failure to do so is a tacit permission to the remaining partners for continuing the business and treat his share of profit as trust with them. Therefore, he cannot claim the additional profit accruing after he terminated the partnership. On the contrary, in the case of inheritance the business after the death of the original owner came into the joint ownership of the inheritors and no inheritor can use the share of the other without his express permission, and even if other partners remain silent it did not mean that they had terminated their partnership with their free will. Therefore, the analogy of regular partnership cannot be applied here.

1. The situation is different where the withdrawing partner, who "walks out", demands his share in the partnership, but the remaining partners refuse or otherwise deliberately delay such payment of the share of the withdrawing partner. The refusal to pay such share amounts to GASB, and/will confer an entitlement in favour of the withdrawing partner to claim a share of the profits on his own capital for the period as from date of dissolution until date of payment, according to certain jurists, eg. Shafei School. (EDITOR)

9

DECREASING PARTNERSHIP AND HOUSE FINANCING

Q .1The bank would purchase the land or property from the vendor and sell it to the would be buyer on an instalment basis. Each instalment would act as an increasing participation by the tenant in the property until such time as all the instalments have been paid. At that time the tenant would contractually be given ownership of the property. The bank would profit from the sale of the land or property together with an arrangement fee part of which would be rebateable conditional on the buyer making the instalment of the purchase in accordance with the terms of the contract.

Family security (Aman al-Osra) would form an integral part of this product possibly on the basis of a group policy with collective participation. This facility may also be used for the construction of new houses.

We have submitted that the type of product we have described affords a strong social benefit to elements of society and at the same time is consistent with the provisions of Islam. How does it seem to you?

For the bank to be able to undertake such a scheme it must obtain special dispensation from the central bank.

10

AUTO FINANCE

Q .2The auto finance is, I believe fairly simple to do under a forfeiting approach through a third party - the dealer. In this way ownership is retained until all the rental have been paid under Ijara wa Iktina principle.

11

CREDIT CARDS

Q .3We are most interested in your comments about a credit card. If you have any more information we would be pleased to have it." (Ali Hasan Ali, Director General Institute of Islamic Banking and Insurance, London)

Answer At first place you have asked for the instrument of decreasing partnership and its use in house financing. Generally speaking

the concept of decreasing partnership is acceptable in Shari'ah subject to certain conditions. The general framework of this arrangement should be on the following lines:

The land or property should be purchased jointly by the financier and the ultimate beneficiary who may contribute to its price on whatever minimum ratio. For example, he can contribute 10 per cent of the price. The rest of 90 per cent shall be contributed by the financier and the property will be owned jointly by the two parties, then the property should be divided into different units e.g. each unit may be 5 per cent or 10 per cent of the whole property. The ultimate beneficiary may use the 90 per cent of the property owned by the financier for a specific rent charged by him. At the same time the beneficiary can purchase the units owned by the financier gradually within the agreed period. Whenever the beneficiary purchases a unit from the financier, the rent is reduced to that extent. For example, if he has purchased 5 units, the ownership of the financier will be reduced to 85 per cent and he will pay a rent for this 85 per cent units only and so on. In this way the ultimate beneficiary will be purchasing the units owned by the financier gradually until all the units are purchased and owned by him, and the whole property becomes exclusively owned by the ultimate beneficiary.

This arrangement is allowed in Shari'ah and can be usefully utilised not in house financing only, but also in financing to acquire any other fixed assets or vehicles. If you wish to know the details of this arrangement, as well as the Shari'ah justification of such an instrument, you can consult my Arabic Book : " *Discussions on Contemporary Juristic Issues* " in which I have dealt with this instrument in detail.[1]

Your second question relates to the issue of Auto Finance. You have suggested that it should be on the basis of hire purchase. The concept of hire purchase is not fully in accordance with Shari'ah. The acceptable form of such a finance should be either on the basis of leasing where at the end of the period of lease the lessor would be at liberty either to repossess the asset or sell it to the lessee himself or to any other party. The price of the sale can be determined at that stage by mutual consent. It

1. House financing encompasses three separate contracts:
(a) the contract of joint ownership of the property between the financier and the ultimate beneficiary in preagreed proportions;
(b) the contract of lease in terms of which the financier leases its proportionate undivided share in the property to its co-owner (the ultimate beneficiary) at an agreed rental;
(c) the contract of sale in terms of which the one co-owner (the ultimate beneficiary) purchases fixed shares of the other co-owner (the financier) over a period of time on agreed terms.
Each of these contracts, separately, are valid in Shari'ah by consensus of jurists. Each contract will be concluded separately at the relevant time, to avoid the one beong conditional upon the conclusion of the other. (EDITOR)

may be its depreciated value or a nominal value or whatever price they may agree upon. The second acceptable form of Auto Finance may be on the principle of decreasing partnership as explained in my reply to your first question. Your third question is about the Shari'ah ruling about the credit cards. The credit cards prevalent in the market today are of different kinds. If the card holder has an account in the bank, which has issued the card and the bills of his purchases are directly debited to his account, there is no problem with such an arrangement, because there is no possibility of the charge of interest because the bank charges interest only in a case where the card holder defaults in the payment of bills. In the case of direct debit there is delay but if the card is not obtained on the basis of direct debit system, some contemporary scholars are of the view that this type of card should not be used by a Muslim for the reason that it may happen that the card holder delays in the payment of the bill of the issuer of the card (the financial institution) whereby he will be liable to pay interest. But in my personal view as well as in the view of some other Scholars, if a card holder is confident that he will pay the bills within the specified period without fail he can avail of this credit card and should always be cautious to pay the bill promptly before any interest is due thereon.

As for the initial fee or the annual fee charged by the issuer of the card, it cannot be taken as interest because it has no relation with the amounts of the bills actually paid by the bank. It is a service charge for undertaking certain service facilities to the card holders, hence they are permissible in Shari'ah. The third aspect of the credit card is that the issuer of the card charges a certain discount from the merchant who accepts a credit card. Some contemporary Scholars are of the view that it is analogous to discounting of the bills of exchange but my view is different, which is also supported by the view of many contemporary Scholars.

I feel that this discount or commission charged by the issuer of the credit card is analogous to commission charged by a broker. It is evident that the card facility brings a large number of customers to the merchants. Had he not entered into such an arrangement with the issuer of the card, those customers would have not come to him, therefore, the issuer of the card is the basic cause for securing good customers for the merchant and he can rightfully charge a commission on this service rendered to the merchant.

This is my view about the general credit cards i.e. American Express, Master Card etc.

I hope these explanations will answer your questions.

12

WORKING IN HOTELS SERVING LIQUOR AND PORK

Q.1 Muslim students who go to non-Muslim countries for higher education generally find out that the money sent to them by their parents is insufficient for their many needs. Thus, they take up jobs to stay even. Some times they find jobs in hotels which sell liquour and pork. Is it permissible for a Muslim student to be employed in such hotels?

Q.2 Running a distillery or merchandizing liqour or pork in non-Muslim countries are open businesses. Can Muslims also do so?

A1. & 2. A Muslim is permitted to take a job in hotels run by non-Muslims subject to the condition that this Muslim employee does not take up the duty of supplying pork or serving liquour and other forbidden things to non-Muslims. For, making others drink or serving it to them is forbidden.

According to a narration from Sayyidna 'Abd Allah ibn 'Umar, may Allah bless them both, the Holy Prophet (S.A.W) said:

لعن الله الخمروشاربها وساقيها وباءعها و مبتاعها وعاصرها
ومعتصرها وحاملها والمحمولة اليه

Allah has cursed liquor and its drinker, its server, its seller, its buyer, its squeezer and whoso it has been squeezed for, and its carrier and whoso it has been carried to.

In Tirmidhi, a narration from Sayyidna Anas ibn Malik says:

لعن رسول الله صلى الله عليه وسلم في الخمر عشرة : عا صرها
ومعتصرهاو شاربها وحاملها والمحمرلة اليه وساقيها وبائعها واكل
ثمنها والمشترى لها والمشتراة له

The Holy Prophet (S.A.W) has cursed ten persons connected with drinking: The squeezer of liquor and the one for whom it has been squeezed, its drinker and its carrier and the one for whom it is carried, its server and its seller and the consumer from its sale proceeds, its buyer and the one for whom it is

bought.

The words of the *hadith* narrated by Sayyidna Anas (R.A) appear almost identically in Ibn Majah as well:

عاصرها ، ومعتصرها والمعصورة له وحاملها والمحولة له وبائعها
والمبيوعة له وساقيها والمستقاة له

The squeezer of liquor and the one who orders its squeezing and the one for whom it has been squeezed, and its carrier and the one for whom it is carried, and its seller and the one to whom it is sold, and its server and the one who has been served with it.

Imam al-Bukhari and Imam Muslim; (R.A), have narrated the following *hadith* from Sayyidna 'A'ishah (R.A):

قالت: لما نزلت الا يات من اخر سورة البقرة خرج رسول الله صلى
الله عليه وسلم فاقترا هن على الناس ، ثم نهى عن التجارة فى
الخمر

She said: *"When the concluding verses of Surah al-Baqarah were revealed, the Holy Prophet (S.A.W) went out of the house and recited those verses before people present there. Then, he prohibited trading in liquor."*

Imam Muslim has reported the following saying of Sayyidna Ibn 'Abbas (R.A) as attributed to the Holy Prophet (S.A.W):

ان الذى حرم شربها حرم بيعها

The one who has made drinking of liquor unlawful is the one who has also made its buying and selling unlawful.

And Imam Ahmad has reported the following narration in his Musnad:

عن عبدالرحمن بن وعلة، قال: سالت ابن عباس فقلت :انا بارض
لنابها الكروم، وان اكثر علاتها الخمر، فذكر ابن عباس أنرجلا
اهدى الى النبى صلى الله عليه وسلم روايه خمر ، فقال له رسول الله
صلى الله عليه وسلم : ان الذى حرم شربها حرم بيعها

This is a report from 'Abd al-Rahman ibn Wa'lah. He says: 'Once I asked Sayyidna Ibn 'Abbas: "We live in an area where we own vineyards and the major source of our income there is nothing but liquor.' To this, Sayyidna Ibn 'Abbas replied, 'A certain person came to the Holy Prophet (S.A.W) and presented a leather bag full of liquor as a gift for him. Then, to him, the Holy Prophet (S.A.W) said: 'The one who has made the drinking of liquor unlawful is the one who has also made its buying and selling unlawful."

In the light of the *ahadith* quoted above, it becomes clear that the business of liquor is also unlawful, as is its transportation from one place to the other, or its offering for consumption. The ruling given by Sayyidna Ibn 'Abbas (R.A) also provides a clear answer to the situation in which the distilling, and buying and selling of liquor may be common local practice, still, there too, it will not be lawful for a Muslim to adopt dealing in wine as a means of his livelihood.

And as far as I know, no *Faqih* from among the Muslim Jurists has ruled it as permissible.

13

A WILL OF MORE THAN ONE THIRD OF THE PROPERTY

Q *"On page 5 of the October, 1993 issue of ALBALLAGH I have read with interest the commentary on Verses 180 - 182 and particularly the Hadith narrated by Sayyidna ibn 'Abbas (R.A) and the conclusion given which purports to make it permissible for an inheritor to receive more than his/her share if all inheritors allow the enforcement of a will which names an inheritor to receive more than his/her share.*

From previous issues several months back and from other material read, it was my understanding that only one third of the total net assets can be gifted as part of a will to non-inheritors and that no allowances in gifts can be made to normal inheritors where their share would exceed that which is ordained by ALLAH.

Please comment on this aspect of inheritance, laws and remove any confusion or misconception that has cropped up in my mind and possibly in other reader's minds too.

Your prompt attention to this request will be much appreciated. Thank you and Jazakallah."

(Muhammad Hussain Chand Karachi)

A Answer to your question is very simple. Islamic law of inheritance does not permit a person to make a will in favour of any one of his legal heir so as to increase his share in the property of the deceased to more than the share prescribed for him by the Shari'ah. But this limitation has been imposed only to protect the rights of other inheritors, because any increase in the share one heir would violate the rights of the remaining heirs whose shares would be reduced. However, if all other inheritors are sane and major, they can waive their right in favour of some other inheritor. Therefore, if a deceased person has made a will in favour of one of his legal heirs, and all other inheritors, being sane and major, have consented to enforce it, there is no bar in Shari'ah against its enforcement, because the restriction was meant to safeguard the rights of all the legal heirs and if they themselves have waived their rights, there is no violation of any right in its enforcement. It will be like a gift made by them in favour of the legatee. It is this principle that has been enunciated in the *hadith* of Sayyidna Ibn 'Abbas (R.A) quoted in Ma'ariful Qur'an in the following words:

"There is no will for any inheritor unless all inheritors permit."

But it should be kept in mind that the permission of other inheritors will be effective if they have given such permission after the death of the testator. The permission given in his lifetime is not a valid permission unless it is confirmed after his death.

Similarly, the restriction that a person cannot bequeath more than one third of his property is also meant for the protection of the rights of the legal heirs. But if all of them, being sane and major, are agreeable, a will of more than one third of the property can also be enforced. For example, if a person has bequeathed one-half of his property to a mosque, and all the legal heirs are agreeable to enforce it, they can do so, but in this case the *thawab* of one third will go to the decreased and the thawab of the remaining one eighth will be deserved by his legal heirs who have foregone this part of their share for a mosque.[1]

14

THE INSURANCE OF CARS

Q *"Is car insurance permissible? The photo-copy of an article published in "Arab News" is enclosed wherein it is held that car insurance is perfectly permissible and it is not against the concept of "Tawakkul" or "Taqdeer". Please explain whether or not this viewpoint is*

1. The principle is that a major heir may freely, after the death of the testator, waive the whole or a part of his inheritance in favour of another person. (EDITOR)

correct in Shari'ah."

(Mansoor Qadri, Jeddah)

A I have gone through the enclosed article, and I am sorry to say that the viewpoint mentioned therein does not reflect the correct position of insurance according to the principles of Shari'ah as recognized by the overwhelming majority of the contemporary jurists.

In fact, all forms of the commercial Insurance prevalent in the traditional Insurance companies are against the Islamic principles because they have either an element of *riba* or the element of *qimar* or *gharar.*

The basic cause of the impermissibility of the current methods of insurance is not that the insurance is against the concept of *tawakul* or *taqdeer,* it is rightly mentioned in the article of "Arab News" that taking a precautionary measure against a possible loss or seeking a safe-guard against an accident does in no way contravene the concept of *"Tawakkul"* (placing one's trust in Allah) and of *"Taqdeer"* (Allah's will and destiny).

However, like any other act in this life, every measure of precaution must conform to the principles of Shari'ah and should not in any manner cross the limits prescribed by the Holy Qur'an and Sunnah.

It is a well settled principle of Shari'ah that every transaction between two parties in which the payment by one party to the other is certain and mandatory while payment by the other party depends upon a contingency (which may or may not occur) is included in *qimar* and *gharar* and is, therefore, unlawful.

The insurance of cars or other goods with the traditional Insurance Companies is a commercial transaction in which the person who wants to insure his goods is bound to pay a premium to the company in accordance with the prescribed conditions. This payment is certain and mandatory without which an insurance is not possible. But on the other hand, the payment by the company is not certain. It is contingent upon an event or accident which may or may not occur. If the accident takes place, the company is bound to pay an amount far more higher than the amount of the premium paid by the insured, but if the accident does not take place, the company does not pay to him anything and the premium paid by him goes without any return. In other words, the insured is bound to pay in any case while the company may or may not pay. Such kind of transaction is termed as *gharar* and *Qimar* and is strictly prohibited in Shari'ah.[1]

Moreover, if the accident takes place, the amount of insurance is

paid to the insured as a consideration of the amount of premium. It is again repugnant to the well-settled principle of Shari'ah that where money is exchanged for money, both the amounts should be equal in quantity. Any increase on either side is 'riba' which is clearly prohibited by the Holy Qur'an and Sunnah.

It is for these reasons that all the prevalent forms of commercial insurance have been held by the majority of the contemporary Muslim jurists as prohibited. This subject has been thoroughly discussed in different international seminars and conferences. Lastly, the question was also put before the Second Annual Session of the Islamic Fiqh Academy (established by the OIC) in Jeddah where all the Muslim countries were represented through their eminent scholars. After a detailed discussion of the subject, the Academy has adopted the unanimous resolution that the prevailing forms of insurance are prohibited in Shari'ah. However, the Muslim countries can develop their own system of insurance through the concept of *takaful, waqf* etc.

However, it should be remembered that since third party insurance is a mandatory legal requirement for every car-owner, he can effect this kind of insurance, because it is not possible for him to avoid it.[2]

15

COPYRIGHT IN ISLAM

Q Can you please explain the Islamic injunctions about the "copyright", especially about the copyright on computer software? The questions are: (i) Can we register a book under the copyright Act which bars the people from publishing that book without the permission of the copyright holder? (ii) If something is registered under the law of copyright, should we abide by the restrictions imposed by that law? (iii) Can a copyright holder sell his right of publishing to another person for a monetary gain?

(Khalid J. Ajhtar, Lahore)

A The question of "copyright" is related to a wider concept, generally known as the concept of "intellectual property". In previous days the concept of ownership was confined to those tangible commodities only which can be perceived through our five senses. But the speedy progress

1. Furthermore, the insurer does not render any corresponding service or services against receipt by it of, and in exchange for, the premiums paid by the insured. (EDITOR)
2. In many countries, "third party insurance" is not true insurance because the government compensates the victims from a fund which is raised through taxation - which is permissible. (EDITOR)

in the means of communication gave birth to the new concept of "intellectual property" which extended the concept of ownership to some intangible objects also. The theory of "intellectual property" contemplates that whoever applies his mental labour to invent something is the owner of the fruits of his labour. If a person has invented a certain instrument, he does not own that instrument only, but he also owns the formula he has used for the first time to invent it. Therefore, nobody can use that formula without his permission. Similarly, if a person has written a book, he is the exclusive owner of the right to publish it, and nobody has any right to publish that book without his permission. This right of an author or an inventor is termed as his "intellectual property". It is also implied in this theory that the owner of such rights can sell them to others like any other tangible objects. The law of "copyright" has come into existence in order to secure such rights and to give legal protection to this kind of property.

It is obvious that the concept of intellectual property on which the law of copyright is based is a new phenomenon created by the rapid progress of industry and the means of communication, therefore, the concept is not expressly mentioned in the Holy Qur'an or in the *Sunnah* of the Holy Prophet (S.A.W).

The acceptability or otherwise of such new concept which are not clearly mentioned in the original resources of Islamic jurisprudence can only be inferred from the general principles laid down by the Shari'ah. As the views of the jurists may differ while applying these principles to the new situations, there is always a wide scope of difference of opinion in such cases. The question of "intellectual property" has also been a subject of discussion among the contemporary Muslim scholars of Shari'ah whose opinions are different about its acceptability in Shari'ah.

A group of contemporary scholars do not approve the concept of "intellectual property". According to them the concept of ownership in Shari'ah is confined to the tangible objects only. They contend that there is no precedent in the Holy Qur'an, in Sunnah or in the juristic views of the Muslim jurists where an intangible object has been subject of private ownership or to sale and purchase. They further argue that "knowledge" in Islam is not the property of an individual, nor can he prevent others from acquiring knowledge, whereas the concept of "intellectual property" leads to monopoly of some individuals over knowledge, which can never be accepted by Islam.

On the other hand, some contemporary scholars take the concept of "intellectual property" as acceptable in Shar'iah. They say that there is no

express provision in the Holy Qur'an or in the *Sunnah* which restricts ownership to tangible objects only. There are several intangible rights accepted and maintained by the Shariah, and there are several instances where such intangible rights have been transferred to others for some monetary consideration.

They contend that the concept of "intellectual property" does in no way restrict the scope of knowledge, because the law of "copyright" does not prevent a person from reading a book or from availing of a new invention for his individual benefit. On the contrary, the law of "copyright" prevents a person from the wide commercial use of an object on the ground that the person who has invented it by his mental labour is more entitled to its commercial benefits, and any other person should not be allowed to reap the monetary fruits of the former's labour without his permission. The author of a book who has worked day and night to write a book is obviously the best person who deserves its publication for commercial purposes. If every other person is allowed to publish the book without the author's permission, it will certainly violate the rights of the author, and the law of copyright protects him from such violation of rights.

Both of these views have their own arguments. I have analysed the arguments of both sides in my Arabic treatise **"Discussion of Contemporary Legal Issues"** and have preferred the second view over the first, meaning thereby that a book can be registered under the Copyright Act, and the right of its publication can also be transferred to some other person for a monetary consideration.

This is an answer to your question no (i) and no (iii).

Coming to the question no (iii), I would like to add that if the law of copyright in a country prevents its citizens from publishing a book without the permission of the copyright holder, all the citizens must abide by this legal restriction. The reasons are manifold.

Firstly, it violates the right of the copyright holder which is affirmed by the Shariah principles, according to the preferable view, as mentioned earlier.

Secondly, I have mentioned that the views of the contemporary scholars are different on the concept of "intellectual property" and none of them is in clear contravention of the injunctions of Islam as laid down in the Holy Qur'an and *Sunnah*. In such situations, an Islamic state can prefer one view over the other, and if it does so by specific legislation, its decision is binding even on those scholars who have an opposite view. It is an accepted position in the Islamic jurisprudence that the legislation of an

Islamic state resolves the juristic dispute in a matter not expressly mentioned in the Holy Qur'an or in the *Sunnah.* Therefore, if an Islamic state promulgates a law in favour of the concept of "intellectual property" without violating any provision of the Holy Qur'an and *Sunnah,* the same will be binding on all its citizens. Those who have an opposite view can express their standpoint in academic discussion, but they cannot violate the law in practice.

Thirdly, even if the government is not a pure Islamic government, every citizen enters into an express or a tacit agreement with it to the effect that he will abide by its laws in so far as they do not compel him to do anything which is not permissible in Shariah. Therefore, if the law requires a citizen to refrain from an act which was otherwise permissible (not mandatory) in Shariah, he must refrain from it.

Even those scholars who do not accept the concept of "intellectual property" do not hold that it is a mandatory requirement of Shari'ah to violate the rights recognized by this concept. Their view is that it is permissible for a person to publish a book without it's author's permission. Therefore, if the law prevents them from this "permissible" act, they should refrain from it as their agreement (of citizenship) requires them to do so.

Therefore, it is necessary for every citizen to abide by the law of copyright unless it compels a person to do an impermissible act, or to prohibit him from performing a mandatory act under the Shari'ah.

16

INTEREST IN A NON-MUSLIM COUNTRY

Q *1."The Finance Company is asked by clients for Machinery. Cars, Equipment, etc on credit. Can it purchase these and other items by cash or credit and then sell them at either 20%, 30% or 40% profit in conformity to payment periods and mutual agreement. Is the above form of contracts permissible or not? The above stated percentages of profit are to be paid in cash by the client while the balance is paid over agreed terms. (Y. Loonat, Mozambique)*

A The proposed transaction is called Murabaha and it can be permissible in Shariah subject to the following conditions:

1. The machinery or equipment etc should first come into ownership and possession of the Finance Company and should remain in its risk for a certain period, then it should be sold to the client. It will not be permissible to give the client the amount of purchasing price by which he himself

purchases the equipment for himself and it is presumed that the Financial Company has sold it to the client.

2. The price on which the commodity will be sold to the client as well as the period of payment should be fixed without any ambiguity.

3. Once the price is fixed it will not be changed due to any delay in the payment by the client.

Q 2. *"Can Motor cars and Machinery be leased to the clients on the following basis:*

a) Leasing only.

b) Leasing with an option to purchase at the price at which the vehicle was initially purchased.

b.1) Cars leased will be provided only if a stated percentage of either 20% or 30% (as mutually agreed) of the vehicle, or equipment or machinery value is left as a guarantee and would be returned at the end of the lease period. (Ibid)

A Leasing is permissible in Shariah subject to the condition that the leased assets are owned by the Lessor and he will have to bear the risk relatable to the Corpus of the leased assets. Therefore, if the leased asset is destroyed due to some unavoidable natural calamity, the owner will have to suffer the loss. Any condition to the contrary, as in vogue in the contemporary financial leases, will render the contract of lease void in Shariah. It is not permissible in Shariah to link the Contract of lease with a contract of sale at the end of the leased period. The contract of lease should be independent, and it will be open to both the parties at the end of the lease period to enter into the contract of sale or not to enter into it. If the contract of lease is subject to the condition that the owner shall sell the leased asset at the end of the lease period to the Lessee, the contract shall not be valid according to some jurists, while some other jurists take it as permissible. Therefore, this condition should be avoided as far as possible.

The Lessee can be asked to deposit with the Lessor a certain amount as security for the prompt payment of the periodical rent. This amount shall remain as a deposit with the Lessor and shall be refundable to the Lessee at the end of the lease period.

Q 3."In our country, the drivers of the vehicles that meet an accident are immediately sent to Jail until a court case is held. This can take six months, one year or more. If the accident causes injury to any person, the driver is sent to prison till the injured person recovers.

Can we, therefore, take insurance cover to prevent ourselves from the above inconveniences since the regulations of our country allow an insured party that is involved in an accident to be prevented from imprisonment.

A All the methods of insurance in vogue in our times are unfortunately based on interest and *qimar*, therefore they are not permissible according to Shariah. However, in the situation referred to in this question one can take an insurance cover in order to avoid inprisonment only, but if the Insurance Company pays to him some amount, he cannot utilise it except to the extent of the premium actually paid by him to the Insurance Company.[1]

Q 4. (a)Can the Finance Company take loans from an Insurance Company?

(b) Can the company take loans from any other Company or private person owning money?

Amounts forwarded are invested as above in No.1 and No.2.

(c) These creditors are given commission / part profit of the partnership contract. Is this permissible?

A The Finance Company can take a loan from any individual or Institution, but it should be free of any interest charged thereon. If the commission to be given on a loan is fixed in relation to the principal amount, it will be interest no matter whether it is charged under the name of interest or under the name of commission, but if money is given on the condition that any profit accruing on that amount after investing it in a Commercial Enterprise shall be distributed between the Financer and the client, it will be partnership or Musharakah agreement which is permissible in Shariah.

Q 5. (a) Banks charge a commission for providing a Guarantee to clients purchasing goods etc. Can such a commission be added to the costs of the client?

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1. This view is based on the principle of necessity. (EDITOR)

(b) Can the Finance Company charge a commission for providing a Guarantee for goods purchased by its client?

A Any fee charged on a Guarantee is not permissible in Shariah. Therefore, any amount paid as a fee for a Guarantee cannot be added to the cost of the Commodity in a transaction of Murabahah.

Q *6. The Finance Company buys cars, Machinery, equipment etc and sells the same to the clients. Sometimes the clients:*

a) Return the goods.

b) Cannot pay for the goods.

Can the Finance Company retake the goods at a price less than that at which the goods were originally sold to him.

A In a case where the buyer could not pay the price of the goods sold to him, it is not permissible for the seller to repurchase the same goods from the buyer at a lesser price. However, if the commodity has been subjected to depreciation, the seller can repurchase it at a depreciated price according to the market valuation.

Q *7. (1) Can Zakat money be given to Non-Muslims i.e. Christians and Hindus.*

(2) Can Zakat be given to persons who are AleRasool i.e. syed Ahle Bait.

(3) A loan is given by housewife to a servant over a period which he is unable to repay. Can it be adjusted to Zakat for the current year.

(1) *Zakat* money cannot be given to a Non-Muslim

(2) *Zakat* cannot be given to a person who is from the progeny of Hashim, the grandfather of the Holy Prophet (S.A.W). Such persons should be supported by other sources like gifts and presents, but *Zakat* should not be given to them.

(3) *Zakat* cannot be paid through relieving a Debtor from the amount of loan advanced to him. If the housewife wants to adjust her loan to the amount of *zakat*, she can give to her servant the amount of *zakat* in cash, then ask him to pay her loan. If he pays his loan out of that money, it will be permissible for the housewife to receve it back.

Q *"I am an Indian Muslim Business-man, staying in Saudi Arabia, since 9 years, and a regular reader of Al-Balagh International. May Allah reward you in full, for your service to the Umma. I have few Questions in mind, I would be grateful if you answer them.*

1. Can we take loan from Government, Banks, Financiers, (in India) for the purpose of doing business, or constructing a house, and we have to pay interest. Heard some Muftees in India have permitted the business-men to take loan. Is this allowed, in case of Dar-ul-Harb? The permission is given on the basis, that if Muslim takes loan and does big business, he will employ a big number of Muslim staff, and many unemployed Muslims can get job, and it is a matter of thawab. If we don't do it, the Non-Mulsims are doing it, and all big business will be only in the hands of Kafirs. This is practical problem. Could you Please comment?

2. If No is the answer to my above question, Can you please let us know the way to do big business in India, without taking loan? I think it's impossible, and when I studied this carefully, I found more than 95% of Muslim Industrialists, Exporters, and big Trading Groups, do take loan, just to be safe from the Govt.

As you cannot declare your white money, if you do, you have to pay heavy taxes. So the best way to show the source of income or cash money is loans from Bank, and to pay tax on this money is easy. I am really confused, and this is the main reason, I have never started business in India. Can you please solve this problem? Jazakallah Khair.

(H.R. Salman, Saudi Arabia)

A According to the overwhelming majority of the Muslim jurists, there is no difference between Darul-Islam and Darul-harb in the prohibition of riba. A transaction of *riba* is totally prohibited, no matter whether the other party to the transaction is a Muslim or a non-Muslim. Although Imam Abu Hanifah has allowed interest in a non-Muslim country with certain conditions, yet this view has not been approved by the majority of jurists, including a large number of Hanafi jurists themselves.[1]

1. Imam Abu Hanifah (R.A) was of the view that any **"transaction"** between a Muslim and non-Muslim in **Darul-Harb** did not give rise to Riba because the acquisition was an original one, the property of the non-Muslim being a permissible original acquisition, not arising from contract but ISTILÄ (الاستيلاء). Hence, it did not fall within the ambit of the verses prohibiting interest or riba. Muslims living as minorities in non-Muslim countries enjoy constitutional rights and protections, within a secular state in common with other citizens. Their status appears to be different from Darul-Harb, literally, a state of ongoing military conflict between Darul-Islam and Darul-Harb. There is a need to properly define Darul-Harb in the context of the modern state to determine whether Imam Abu Hanifah's view has any application at all. (EDITOR)

In the early days of the Holy Prophet (S.A.W) many Muslims used to enter into riba transactions with non-Muslims, but when *riba* was prohibited, they stopped this practice totally. The verses of the Holy Quran which prohibited *riba* did not differentiate between a Muslim and non-Muslim. Similarly there is no example in the days of the Sahabah (RA) where any one of the Sahabah entered into a *riba* transaction with a non-Muslim after the prohibition was enforced.

Therefore, one cannot be advised to take an interest-bearing loan, even in a non-Muslim country. I have heard of some Indian Muslims (in Bombay) who are trying to establish an Islamic bank or a financial institution to be run on the basis of Islamic modes of financing. You should approach them for your financial requirements. They may help you in this respect.

17

THE ANNUAL FEE CHARGED ON A CREDIT CARD

Q *"The scholars of Fiqh Academy have approved the use of credit cards as reported by Arab News, 15 May.*

As you know, banks charge a fixed annual fee for credit cards use. Can I ask the bank to issue a credit card to me and offset their annual fee against the interest which I do not take from them?

(Muhammad Salim Desai, Alkhobar, Saudi Arabia)

A The report of Arab News is not correct. In fact, the Islamic *Fiqh* Academy, after a preliminary discussion on the issue of credit cards, has deferred the matter to the next session without adopting a specific resolution in this respect.

However, in my view, the annual fee charged on a credit card cannot be termed as interest or riba. In fact, it is a service charge claimed by the issuing bank from the card holder against the different services provided by it. That is why the amount of this annual fee is never linked with the actual amount paid by the bank to the merchants on behalf of the card holder. This annual fee is charged even if the card holder does not use the card throughout the year. The fee charged is a lump sum irrespective of the actual amounts of purchases. Moreover, the annual fee is so nominal that it has no relation to the prevalent rate of interest. Practically, the issuing bank or institution has to provide different facilities to the card holder, and the annual fee is not more than a reasonable charge for such services.

It is thus clear that the annual fee for the credit card is neither interest nor any impermissable charge according to Shari'ah, and it is a valid charge for the services rendered. Therefore, it will not be permissible in Shari'ah to offset this annual fee against the interest accrued to the card holder in the same bank. The reasons are twofold.

Firstly, it is not permissible in Shari'ah to open an interest bearing account. Surplus money should always be deposited in a current account where no interest is receivable.

Secondly, if somebody has deposited his money in an interest bearing account erroneously he cannot use the amount of interest for his own benefit nor can he use it to settle any rightful claim against him. Since the annual fee of a credit card is a rightful claim against the card holder, he cannot set it off by the amount of interest earned on his account.

18

INSTALMENT SALES OF HOUSES

Q *"The Fiqh Academy has also allowed installment sales. Does this mean that I can now buy a house in UK or USA on installments bearing in mind that each installment includes repayment of "principal" and "interest".*

A Sale on installment should never be confused with a transaction of interest bearing loan. In a sale transaction subject matter of contract is a commodity which should necessarily be owned by the seller at the time of sale and should be in his possession. But in the case of loan the subject matter of the transaction is money which is advanced to the borrower. The house financing schemes generally practiced in the Western countries are based purely on interest. The banks advance money for the purchase of the house and charge interest on it. The house is mortgaged as a security for the repayment of loan. This transaction has nothing to do with a transaction of sale on installments. The house is never purchased by the bank, nor does the bank sell the house to the customer. The customer purchases the house from a third party and owes its price to him. The bank comes in only to finance the buyer on the basis of interest. Therefore, this transaction is a riba transaction which is strictly forbidden and cannot be justified on the presumption that it is a transaction of sale on installments.

However, if the seller himself sells the house on installments and charges a price higher than the cash price, or the bank itself purchases the house from the seller, and after having its ownership and possession

resells it at a higher price to the customer on installments, the transaction may be valid in Shariah, if the necessary conditions of sale are fully observed as mentioned in the resolution of the Fiqh Academy. But the transaction generally in vogue in the Western countries is not based on the concept of sale. It is an interest transaction pure and simple, and a Muslim is not allowed to enter into such transactions.

It is thus clear that your understanding of the resolution of the *Fiqh* Academy is not correct.

19

THE ADJUSTMENT OF INTEREST TO THE LOSS OF CAPITAL

Q *"Thank you for your answer to my question which appeared in November 1991 issue, concerning the adjustement of the interest amount to the loss of principal in the BCCI. Please clarify whether the interest received from another source other than BCCI can be adjusted against loss of capital in BCCI? (M.S. Desai, Saudi Arabia)*

A No, the interest received from any other source cannot be adjusted against loss of capital in BCCI. The principle underlying my former reply is that any amount received from a debtor is always taken in Shariah as part payment of the principal, even though the debtor has paid it in the name of interest. This principle will apply only so far as an equivalent of the principal amount is not received by the creditor. But after the payment of principal is complete, any excess shall be treated as interest and it will no longer be valid in Shariah to claim it from the bank.

But this principle is applicable only where the interest is paid by the same debtor who owes the principal. If the principal is deposited in the bank A and the interest is paid by the bank B, the interest, in that case, cannot be adjusted against the loss of principal deposited with bank A.

20

FURTHER QUESTIONS RELATING TO THE CONSUMER CREDIT CARD

Q *I received your answer to the question on the consumer credit shceme for which I thank you.*

I have, as a humble student, reservations on the correctness of your conclusion. I would be obliged if you would urgently respond to the following:

1. It is correct that on the basis of written documentation the relationship between the company and the customer is shown as one of the lender and borrower. The amount of the loan which is inserted by the merchant on the "Acceptance note" (Form 2), designated as the "invoice amount" is the price of the goods. If, for example, a customer purchases goods for R100,00 then the amount of the loan purportedly advanced by the company to him is reflected as R100,00 which is paid in 6 monthly instalments together with interest theron at the present rate of 9.5%. In fact, the amount lent is not the price of the goods (R100,00) but the price less the agreed discount of 20% to the merchant (R80,00). If the transaction between the Company and the customer was one of pure loan, then the principal amount of the loan should equal the actual payment by the Company to the merchant and not the price of the goods. In your view, the difference between the price of the goods and the actual amount paid to the merchant (R100,00 less R80,00) must be ascribed to additional interest but this does not accord with the terms of the written documentation on which your opinion is based.

Furthermore, in some cases, the customer as "the borrower" is required to pay a deposit of 30% to the Company upon conclusion of the transaction and this payment also is contrary to the essence of a pure loan transaction. Hence, your statement that "the Company pays to the merchant the price owed by the customer/consumer" is not strictly correct because what is paid is the price less the agreed discount (presently 18%).

2. On the assumption that the transaction between the company and the customer is a loan, that transaction is separate from the sale between the merchant and the customer. In your view, the merchant has sold goods to the customer at the marked selling price. The sale viewed separately is valid according to Shari'ah and the principle does not appear to apply here. The fact that as agent themerchant is obliged to pay interest in case of default in accounting to the company does not affect the customer, (non-Muslim), just as the payment of interest by the (non-Muslim) customer to the company does not affect the merchant. In South Africa, in any event, a debtor who fails to pay a debt on time is automatically by law (under the prescribed Rate of Interest Act, 1975) obliged to pay interest thereon at a rate prescribed by the minister in the official gazette from time to time.

3. As regards the agreement between the company and the merchant, you are of the view that agreement amounts to a "complex relationship which is totally against the parameters of the Shari'ah". The provision relating to payment of interest in case of late payment operates

as deterrent. In the absence of such a provision, some merchants would deliberately use the company's money in their own business as working capital for periods of time to the financial prejudice of the company. In any event, the company will agree to delete that provision (clause 4) in the case of Muslim merchants, but the provisions of the prescribed Rate of Interest Act, 1975 would in any event apply by operation of law. Consideration should also be given to the question as to whether that provision (clause 4) is void in itself and therefore severable from the rest of the contract because it does not appear to be contrary to the essence of the contract as to render the whole contract void.

Consideration should be given to the real nature of the transactions concerned without placing undue emphasis on the literal wording of the documents. From this viewpoint, the transactions are analogous to Murabaha on the basis set out in the initial question, although not satisfying all the requirements of Murabaha, such as possession. If, in the light of the foregoing, then please give us your suggestions as to how to validate the transactions concerned according to Shariah. The majority of black people in South Africa, being the underprivileged, purchase their goods in instalments over 6 months. The over whelming majority of Muslim merchants do not have the financial resources to sell goods on credit over 6 months. The effect of your opinion would be that Muslim business, which funds the religious and educational institutions of the community, would be even further weakened, and Muslims would continue to be dominated by white conglomerates. In an endeavor to avoid interest, some Muslim merchants have agreed to grant the company a bigger discount (eg. from 18% to 25%), so that the company in turn has agreed not to charge the customer any interest.

6. Your statement that American Express does not charge interest in its cards is incorrect. All companies throughout the world charge interest to cardholders in case of late payment. Hence, applying the interest principle which appears to be the basis of your FATWA, most transactions would be rendered null and void causing great hardship to Muslims living particularly in non-muslim countries. (M.S. Omar, Durban, South Africa)

A After receiving your objections on my opinion about the Consumer Credit Card scheme which appeared in Albalagh (Rajab 1412/Feb. 1992), I reviewed the matter and studied the scheme and the relevant documents once again giving due consideration to the points raised by you. But, I am sorry to say, I could not agree with your contentions.

You basic argument is that the transaction involved in the Consumer

Credit Card is analogous to the agreement of *Murabaha*: You say that although the words used in the documents are different, but we should treat the transaction as a *Murabaha* sale, because:

> *"Consideration is given to the substance of the transaction and not its form"*

It is true that the intention is more important in a contract than the words used to express it, but the intention should be clearly established either by the context of the agreement or through other external sources. Do you really think that the Company (CCC) intends to purchase the commodity from the Merchant and then sell it to the Customer? Is there any indication to prove that the CCC wants to effect a purchase and sale? I think there cannot be two opinions in that the CCC does not intend to purchase or sell any commodity. If it is assumed that the CCC intends to purchase the commodity and sell it to the customer, it will logically mean that the CCC will be liable to the warranties attached to the commodity. If the customer finds a defect in the commodity, he should lay his claim against the CCC. But neither of these consequences can be said to have emerged out of the transaction under discussion. The CCC never accepts itself to be the seller of the commodity nor does it accept any one of the liabilities consequent to the contract of sale. Rather it is expressly provided in clause 4 of the agreement of CCC with the customer that CCC shall not be liable to any such claim.

Although this nature of the transaction is quite evident, yet, to be more certain, one can ask the CCC whether they intend to purchase the commodity and sell the same to the customer through the Merchant as their agent. I am sure they wil answer in negative.

The correct position therefore, is that:

(i) The words used in the agreement clearly purport to effect a transaction of interest-bearing loan.

(ii) There is not a slightest indication, neither in the agreement nor anywhere else, that the CCC intends to effect a transaction of sale.

(iii) The CCC clearly denies that any sale has been effected by it.

How can we, in these circumstances, insert the concept of sale in the transaction or inject an idea which is totally foreign to their actual intention. The principle of العبرة للمعانی does not mean to impose an arbitrary construction or interpretation of a contract irrespective of the expression used and the objective intended. What the principle actually means is that the literal meaning of the words used in a contract may be

dispensed with where there is a clear indication through other sources that the real intention of the parties is different from what their expression apparently purports. But before applying this principle, one should establish the real intention of the parties concerned through an evidence which is more forceful than the words used in the agreement. It is obvious that no such evidence exists here.

You have laid much emphasis on the discount the CCC charges from the Merchant. You insist that this discount indicates that the CCC has purchased the commodity from the Merchant on a discounted rate, then has sold it to the customer for its full price on which the CCC charges interest. But, I am afraid, this is not the intention of the parties. The discount is not charged by the CCC because the CCC has purchased the commodity. Rather this discount may be interpreted in two different ways:

(a) This is a discount analogous to the discount normally charged by a bank while accepting a bill of exchange. However, it is an extra-ordinary situation where the CCC charges interest from two different persons for the same amount of money and the same period of time, because it charges discount from the Merchant and at the same time it charges interest from the Customer.

(b) There may be another interpretation of this discount. It is possible that it is similar to the commission normally charged by the brokers from the merchants. This brokerage may be justified on the ground that the facility provided by the CCC to the card-holders attracts them to those merchants only who accept such cards. In this way the CCC works for increasing the number of customers dealing with the Merchant, and thus claims a discount / commission from him.

In my humble view, no other interpretation can be ascribed to this discount, and I am sure that no court would interpret it to mean that the CCC has purchased the commodity on a discounted rate.

There is another reason for not treating this transaction a *murabaha*. The agreements clearly prove that they are not restricted to the purchase of goods only. They are used for the services rendered by the Merchants as well. How can a *murabaha* work in the case of services?

Now, there are three parties involved in this transaction:

(i) The CCC (the company who issues the card)

(ii) The Customer (the person who holds the card)

(iii) The Merchant (who accepts the card and sells the goods and

services to the customer)

As for the relationship between the CCC and the customer, it is clearly a relationship of borrowing on the basis of interest. Hence, it is not allowed for a Muslim to become a party to this relationship.

But the case of the third party i.e. the Merchant is different. When a Merchant accepts this card, it means that he has accepted the *hawalah* (transfer) of the debt of his customer which the customer has owed to him by virtue of the sale concluded between them. The price of the goods will now be paid to him by the CCC. There is no violence of any principle of Shariah so far. The discount allowed by him to the CCC can also be treated as a commission to the broker, as explained earlier. Therefore, the discount can also be justified on this ground, just as it has been justified in the case of ordinary credit-cards issued by the American Express etc. But the problem arises when the merchant agrees to become an agent of the CCC for the collection of all the amounts owed by the customer to the CCC, including the amount of interest. It is established in Shariah that agency in a transaction of interest is also not allowed. This is the sole reason, in my humble opinion, for which it does not seem permissible for a Muslim Merchant to sign this agreement with the CCC. However, if the Muslim merchants can avoid the element of agency through a special arrangement with the CCC, it seems to be lawful for them to accept such cards, and to sell the commodities to such card-holders, because the Merchant is not a party to the agreement between the card-holder and the CCC.

You have also asked as to what measures can be adopted in order to bring this transaction within the parameters of Shariah. Coming to this question I would suggest two alternatives:

Firstly the contract can be modified so as to make it a clear *murabaha* transaction with all its implications. This will require radical changes in all the forms and agreements, but, at the same time it will validate the whole transaction and the Muslim will be at liberty to issue such cards, to use them and to accept them . However, it seems difficult that the CCC will accept the implications of *murabaha*.

Secondly, the element of agency for the collection of the dues from the Customer may be eliminated from the agreement signed by the Merchant. It may, however, be provided in the agreement that the Customer either pays his dues directly to the CCC, in which case the Merchant will not be involved in the payment, or he deposits the amount with the Merchant wherefrom the CCC will arrange to colllect it. In this case

the Merchant will act as a trustee for the Customer, and not as an agent of the CCC.

Another alternative may be that the Merchant sells the goods to the Customer at a higher rate which may be equal to the amount he has to pay to the CCC over a period of six months. But it should be a fixed amount finally settled at the time of sale and should not be increased later on. Then the CCC may also claim a brokerage commission from the Merchant on the increased price at a higher rate. In this case the CCC advances a loan to the Customer which is free of interest, and a Muslim Merchant can work as an agent for the CCC to collect the amount of loan.

I think that if the CCC is not agreeable to the first alternatives, this method can be adopted as a last resort. But before applying this method other Ulama should also be consulted because I am not fully confident about it.

Before concluding this discussion, I would like to clarify another point you have raised in the last paragraph of your question. You say,

"Your statement that American Express does not charge interest on its cards in incorrect. All companies throughout the world charge interest to card-holders in case of late payment... "

Actually, I was aware that the Credit Card Companies do charge interest in the case of late payment, but the major difference between normal credit-cards (like American Express etc.) and the Consumer Credit Card (under question) is that the former ones do not charge any interest for the initial period which extends in some cases to three or four months. It is only in case of default after the prescribed period that they charge a penalty interest. Therefore, their basic transaction *per se* does not have an element of interest. The penalty-interest is an additional condition imposed by them which does not render the whole transaction invalid. Therefore, if a Muslim subscribes to such credit cards with a clear intention that he will always pay the bills of the company promptly and he has good reason to believe that he will never become a defaulter, and will never have to pay interest, it will be permissible for him to use such Cards.

The case of Consumers Credit Card is totally different. Here every card-holder is bound to pay interest from the very beginning. He has to pay interest for each and every day. So, the whole transaction is based on interest. It was this major difference for which I had distinguished the case of normal-credit cards from the Consumer Credit Card under discussion.

This will clarify another misconception also. It was not the clause of

penalty-interest that formed the basis of my opinion. In fact, the nature of the transaction is such that it cannot be distinguished from an interest-bearing loan, and I have already elaborated the basic reasons for its impermissibility for each one of the three parties.

21

THE CONSUMER CREDIT SCHEME

Q It is becoming common for Muslim retail businessmen in South Africa to enter into the so-called consumer credit scheme. The retailer concerned concludes a written agreement with a third party Company ("the Company"). A copy of the specimen agreement is enclosed herewith. In terms of the scheme:

a) the customer wishes to purchase such goods on credit over 6 months;

b) the customer wishes to purchase such goods on credit over 6 months;

c) the customer is informed that the Company may sell him such goods on credit and, for that purpose, the customer fills in a prescribed apllication containing details relating to his credit-worthiness;

d) that application form is immediately faxed by the retailer to the Company for approval;

e) the Company responds very shortly thereafter (within half hour);

f) if the Company approves such application, it authorises the retailer to supply the goods so selected to the customer on credit;

g) the customer then signs an agreement in the form prescribed by the Company in terms of which he undertakes to pay the Company for the price of such good in 6 monthly installments plus agreed interest. The installments may be paid directly to the Company or to the retailer concerned who as the agent of the Company pays the money so collected directly to the Company.

h) the goods so selected are then handed over to the customer and the relevant completed documentation is then delivered to the Company;

i) the Company thereafter within a week or the agreed time period pays the retailer the invoiced price of the goods less the agreed discount as set out in the specimen agreement between the Company and the retailer which is binding in law. The agreed discount presently is 17½%. It

is apparent from the scheme that two separate contracts are concluded, namely:

i) a contract of sale between the retailer and the Company in terms of which the Company purchases the goods selected by the customer at an agreed price (invoice price less discount) which is paid effectively in cash;

ii) a contract of sale between the Company and the customer in terms of which the Company resells such goods to the customer at the invoice price plus interest in 6 monthly installments.

In the conclusion of both contracts, the retailer acts as an agent and a principal. The retailer acts as a principal in concluding his separate contract of sale with the Company in terms of the overriding specimen agreement which governs his relationship with the Company; and he acts as an agent in delivering the goods selected by the customer who is liable to the Company only for the agreed price plus interest which is payable in 6 monthly instalments as aforesaid.

In the result; the retailer benefits in that:

a) he does not have to carry the financial risk of granting credit to the ordinary consumer;

b) he makes a profit although at a lower margin;

c) he does not have to borrow money on overdraft to fund the granting of credit.

The Company which is wholly non-muslim and financially sound, benefits by making a profit in terms of its instalment sale with the customer concerned.

The scheme appear to be an application of the murabahah principles and your considered fatwa is urgently appreciated by the Jamiatul Ulema, Natal.

(M.S. Omar, South Africa)

A I carefully studied the question concerning the consumer credit card and the annexed documents. The question you have formed does not reflect the correct position as emerges from the agreement forms annexed to the question. A careful study of the agreement forms reveals that this transaction is totally different from the murabaha transactions of the Islamic banks. In case of *murabaha*, the financier purchases a commodity, and after having its constructive or physical possession, sells

it to his customer on deferred payment basis.

On the contrary, the "Company" in the case of consumer credit card, does not purchase the commodity. It simply gives a loan to the customer / consumer on interest, but instead of giving the loan to the customer himself, it settles the invoice value of the commodities purchased by him from the merchant the retailer. In other words, the company pays to the merchant the price owed by the customer / consumer. This is clear from the very first sentence found in the "merchant agreement" form which reads as follows:

"Consumer Credit corporation ltd. (CCC) undertakes to provide finance to the merchant's customers and settle the Merchant's invoice value less the discount due to CCC directly to the Merchant. . ."

Thus the relationship between the Company and the customer / consumer is one of creditor and borrower. There is no sale affected between them. That is why the customer has been named a "borrower" in form I side B, which is a form of agreement between the company and the customer. It is then evident from both of the forms that the company advances a loan to the customer and charges interest thereon (see clause 5 of form I side B). However, the company has made the retailer liable for collecting the installments of repayment from the customer and for paying the same to the company within twentyfour hours. The retailer has also been made liable for interest if he delays in payment after receiving the amount from the customer. But all these conditions do not change the relationship of a borrower and lender between the company and the customer.

As for the relationship between the Company and the merchant, it is a complex relationship according to the agreement which includes the relationship of agency, indemnity and, in certain situations, of money lending on the basis of fixed interest. Such a complex relationship is totally against the parameters of Shariah. Moreover, the provision of interest in case of late payment renders the whole transaction invalid according to Shariah.

Therefore, the scheme of the consumer credit card, as envisaged in the annexed agreement forms in undoubtedly an interest bearing scheme which cannot be held as valid according to Shariah, nor can it be validated on the analogy of the murabahah transaction, because there are a number of basic differences between the two transaction. So, I have no doubt in my mind that it is not permissible in Shariah to become a party to this transaction.

This "Consumer Credit card" is substantially different from the general credit cards issued by several companies like American express, visa etc, where no interest is charged by the company from the card - holder. So, the "Consumer Credit card" in question should not be confused with the general credit cards issued by American express etc. which can be permissible subject to certain conditions.

Q *A large number of Muslims live in foreign countries. Is it permissible for them to take or give interest on loans?*

A For Muslims living in foreign countries, taking of interest is not permissible just as indulging in alcoholic drinks is not permissible for them. Being in a Muslim or non-Muslim country makes no difference. May Allah keep us under His protection wherever we are. Unfortunately, the whole set-up of our living has undergone a major change - ideas, values, concepts - everything is affected. Seen from this angle, the question my friend has posed becomes all the more important.

Let us go to the root. The question is: Under what conditions is it permissible to take a loan? If some one goes to some one else and asks for a loan, it means that the former faces a situation in which the taking of loan has become the only alternative open to him. This will be a situation in which it would be permissible for him to ask for a loan. But, should a person, who is well-to-do, go out seeking a loan on the plea that he already has two factories running successfully and now he wants to set up a third factory, that is, he wants Qarz Hasan, a loan without interest. Then, the very seeking of this loan is not permissible. Asking for money, asking for a loan to line up a third factory on top of the two flourishing ones is a concept which is totally alien to Islam. However, what you can do is that you can ask for finances on the basis of Mudarabah. You say to the other party, here is a business share in whatever the profit or loss may be. This is all right. This is not loan. This is a partnership of the two parties in a business venture on the basis of Musharakah and Mudarabah. So, a loan is permissible only when someone seeks it for personal need.

Q *If someone ends up having some income from interest which is not too uncommon in non-Muslim countries, can this be given away to some one poor, an orphan or a widow?*

A Well. . . the truth of the matter is that one should just not take it right from the very beginning. But, if one has taken it, then he can give it to anyone who is deserving of *zakah* including orphans and widows.

Q Mufti Sahib, is the order of an Islamic government binding on us? For example, when 'Eid comes, the government announces the sighting of the moon and we celebrate the next day as our 'Eid. This is an order of the Islamic government which we obey. Then, we have the order by which we were given the option of opening Profit and Loss Accounts in the banks of the country. Obviously, this action was supposed to eliminate interest. If I put my money in the bank, get whatever profit or loss it gives to me and use it, would it not be permissible for me because I am simply following the order of the government of a Muslim country?

A To obey the order of the ruler is necessary, but this has one limitation. To obey each and every order is not necessary. The rule is: There is no obedience to the created while one has to disobey the Creator. If the ruler gives an order which is against the order given by Allah, the order of that ruler will not be obeyed. In this particular instance you have cited, there is no order as such. This is just a facility provided for you. You may or may not use it. This is no law. Nobody has said that you must open a PLS Account, the contravention of which will be punishable by law.

22

ZAKAH ON A MOSQUE OR ON A CHARITABLE INSTITUTION

Q 1. If a mosque gets substantial income over and above what is required for the expense of the mosque, should it pay Zakah on its income? The income consists mainly of rental income from properties that have been gifted to the mosque. If it is payable what is the rate?

2. Should an association which is engaged in charitable work (mainly assisting needy students to pursue their education) pay Zakah on these incomes which are used for charity. What about Zakah on their wealth which consist of investments in shares in companies and other such investments?

(Ibid)

A 1. *Zakah* is not payable on the assets or on the income of a mosque.

2. If the charitable institution is in the form of regular waqf, *zakah* is not payable on its assets or income. But if the institution is not a *waqf*, *zakah* shall be payable on its zakatable assets. The *zakah* of its assets should be given to the poor persons who do not own the *nisab* of *zakah*.

Q I have recently been told that it is permitted for a Muslim to deal in interest in America or UK i.e. a Muslim can open interest bearing savings bank account in America or UK. The interest received from the bank should then be given to poor and needy Muslims in Pakistan or India. I am told that this ruling is based on the facts that non-Muslims should not benefit from the "interest" not taken by us. I am also given to understand that perhaps you have approved this ruling.

I must say that in America or UK I maintain Current accounts only and thus the question of interest does not arise. The same thing I have tried to do, wherever possible. My idea is based on the fact that a Muslim should have no dealings in the interest, be it as a receiver, writer, or giver.

Please comment on this aspect of "interest" and if your ruling is different for different regions, please advise your ruling for the major regions of the world, such as America, UK, Asia, Saudi Arabia.

(Muhammad Saleem Desai, Al Khobar, Saudi Arabia)

A The correct position is that dealing in interest is *haram*, both in a Muslim or a non-Muslim country. Some jurists have opined that interest bearing loans can be given to a non-Muslim citizen of a non-muslim country, and the interest charged from him is *halal* for a muslim. But this view has not been endorsed by the majority of the jurists. So, the correct view is that charging interest is not permitted in any case, no matter whether the debtor is a citizen of a Muslim country or not.

As for opening a saving account in a non-muslim country with intention to distribute its interest among the poor, I have never recommended or approved of it. I always advise the Muslims to keep their money in the current account. However, if somebody has opened a savings account, either due to his ignorance about the *Shariah* injunctions or because of his negligence, then, in that case only, he should give the amount of interest to the poor persons in order to dispose of this unclean money, and not to earn the *thawab* of *sadaqah*. But it does not mean that he should deliberately open an interest bearing account for the disbursement of its interest among the poor.

In fact, opening an interest bearing account amounts to entering into a transaction of interest which in itself is a clear sin. The one who has already committed this sin is advised to atone for it by giving the interest money to the poor, but one cannot be advised to commit a sin in order to atone for it by helping the poor. Taking bribe, for example, is a sin. If a person has earned some amount through bribes and he is unable to return

it back to the original owners, he is advised to give that amount to the poor in order to atone for his sin to the best possible extent. But one cannot be advised to accept bribe with the intent of giving the money to the needy persons. The same principle is fully applicable to the interest transactions also.

Q I have some interest credited to my account from my days of ignorance. However, I intended to give away this interest money by the end of this year. However, as you know, BCCI has been closed in UK and it is unlikely that we will get full refund of our deposits with them. My deposits consists purely of my own money. Can I adjust some of previously received interest against the loss of my own money in BCCI? If not, can you suggest some other way order to reduce my losses.

(Ibid)

A Yes, in this case you can adjust the interest money received earlier against the loss of your principal. The money you have deposited in the bank according to Shariah, is a loan advanced to the bank. You are entitled to receive it back in full. If the same bank has given you some amount in the name of interest, but has refused later to return your principal in full, you can treat the interest money received earlier as part payment of the principal and can use it for your own benefit to the extent of the total principal deposited by you in the bank.

This ruling is based on the general principles of Shariah and on a *Fatwa* of Maulana Ashraf Ali Thanwi given by him orally and published in a collection of his discourses named "Al-ifadatul yaumiyyal" v.6 p.20 para 32.[1]

23

PERMISSIBLE WAYS OF INVESTMENT IN PAKISTAN

Q "We have come to know that the Pakistani Banks have abolished interest from their transactions and they are now working on the profit and loss sharing basis. What is the correct position in this respect? Can we deposit our money in the PLS (Profit and Loss Sharing) account and avail of the profit accruing therefrom for our personal benefit without any fear of being involved in interest? If the answer is in negative, are there any other financial institutions where we can invest our savings without being involved in riba and who run their business on the Islamic principles and restrict themselves to those transactions only which are lawful in Shariah? (Jawad Sharafat, Karachi)

1. It is apparent from the answer that the interest (which is really repayment of capital) must have been received from the same bank in which the original deposit of capital was made. (EDITOR)

A It is true that it was announced by the government of Pakistan about five years ago that the interest has been abolished from the banking transactions which, in future, will be carried out on the basis of profit and loss sharing. But, unfortunately, the methods adopted to substitute for the interest transactions were not in conformity with the Shariah, rather they were essentially nothing but a different form of interest. No substantial change was brought out, neither in the whole system nor in the nature of transactions. When one looks into the details of these dealings, one cannot avoid the conclusion that it is change in nomenclature only.

The result is that no actual change has yet taken place in the banking system as a whole, and the profit given by the banks to their depositors is another form of interest. Hence, it is not permissible in Shariah to deposit money in a PLS account or in a fixed deposit account of the general commercial banks. If someone wants to open an account in a bank, he should deposit his money in a current account on which no profit (interest) is paid.

As for other financial institutions, most of them are being run on the basis of interest, and the same rule applies to them also.

However, during the last decade, some financial institutions have been established on interest-free basis, and they are actually working, by and large, on the basis of Islamic financial modes. I would refer to three of them here:

1. National Investment Trust (NIT) in Pakistan has been established to provide investment facilities on Islamic principles. Since last two years the majority of its investments has become free of interest. Their investments are mostly restricted to the purchase of the Shares of different companies, and to the murabaha and leasing transactions.

I have gone through their model agreements of murabaha and leasing, and found therein nothing in conflict with the injuctions of Shariah.

However, the NIT keeps its surplus money in the PLS account of the normal banks run on the basis of interest. Thus, a very small proportion of their income consists of the interest accruing on their PLS accounts. This proportion is not lawful according to Shariah.

Similarly, a very small amount of their income comes out of the profit accruing on the participation term certificates (PTCs) purchased by them. The transaction of these certificates is also objectionable according to

Shariah. Although they have now stopped the purchase of PTCs, yet the PTCs held by them in the past are still current and they form a small proportion of their annual income.

Despite these shortcomings, most of their transactions are lawful according to Shariah, and they have provided a facility to the people who want their income to be free from any element of interest. In their membership form they have mentioned all the heads of their income and it has been left to the member to mention in the form that he does not wish to receive the income of some particular Heads.

Therefore, if a person states in the form that he does not want to receive the income of PLS accounts and of PTCs, he can do so, in which case his dividend will not consist of the income of these two heads, and the dividend received by him can be treated as *halal*.

2. There are certain Mudarabas floated by different Mudarabah companies registered under the Mudarabah Ordinance. According to the Ordinance, no Mudarabah can be floated unless it has obtained a certificate from the Religious Board to confirm that the proposed business of the Mudarabah is not in conflict with the Injunctions of Islam. This Religious Board, of which I am a member, examines various aspects of the proposed business and brings amendments where necessary, and certifies after satisfying itself with its conformity with Shariah. As a member of this board, I had an opportunity to examine the main Schemes and the model agreements of most of Mudarabas floated in the market, except for two Mudarabahs, namely, Grindlays Mudarabah and BRR Mudarabah. So far as these two Mudarabahs are concerned, I cannot opine about them objectively. But the rest of the Mudarabahs I can say that their business, if run in accordance with their prospectus and the model agreements approved by the Board, is in conformity with the precepts of Shariah, and one can buy these Mudarabah shares and enjoy the dividend distributed against them as halal.

3. The third financial institution which is based on an interest free system is 'Faisal Islamic Bank'. The Pakistani branches of this bank have restricted themselves to the Islamic modes of finance like Murabaha, leasing and Musharakah only. I have gone through their model agreements and found them, by and large, in conformity with Shariah. One can also avail of the profits distributed by this bank to its PLS and investment accounts.[1]

Before parting with this question, I emphasize that what has been

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1. This opinion was expressed in January 1991 and is subject to change based on the Bank's adherence or non-adherence to Shariah. (EDITOR)

said above is based on my personal knowledge about the currrent state of affairs in these institutions. But two points should always be kept in mind: Firstly, a person like myself can only examine the main scheme of a business and the broad principles underlying it. No outsider can scrutinize each and every transaction going on in actual practice. Therefore, the aforesaid comment on the business of these institutions is based on the basic principles adopted by them in their scheme and their model agreements. If they contravene any of these principles in their actual practice, the ruling may be different. But so far as they claim to abide by these principles, a person can proceed on the presumption that they are following the correct principles unless otherwise proved.

Secondly, each of these institutions always remain subject to changes, alterations and modifications. What is mentioned above is based on their current position. If some substantial change takes place in their procedure, the Shariah ruling about them may also change. It is necessary, therefore, that their current position be ascertained each year by consulting a Shariah expert acquainted with such problems.

24

ADJUSTMENT OF INTEREST AGAINST THE LOSS OF PRINCIPAL

Q *In response to my question, you have replied in the Albalagh International - November 1991 issue - that I can adjust the interest money received earlier against the loss of my principal amount in BCCI, your reply, I assume, is based on the assumption that I want to adjust the interest received earlier "FROM BCCI" against the expected loss of principal amount deposited with BCCI. Suppose the interest was not received from BCCI or only partly received from BCCI. Now the question is that can I adjust such interest amount against the loss of principal in BCCI?. (M.S. Desai, Saudi Arabia)*

A As I have mentioned earlier whatever amount you have received or you expect to receive from BCCI, in whatever name it may be, you can take it as the part recovery of your principal, but it should be kept in mind that your total receipts from the bank should not exceed, in any case, the amount you have actually deposited in the bank. Therefore, if the bank agrees, at a later stage, to pay you more, your claim should be confined to the extent of the arrears of your principal deposit only without any excess thereon.

Q *As you know, in Saudi Arabia, Magreb prayers are usually offered ten minutes after the call for prayers. I have recently seen one Hadith which can be rendered into English as "No one should sit in the mosque until he has offered two rakah." Agreed by all. Also, I have heard a Hadith which can be rendered into English as "Supplication between the azan and the call for the prayers is always answered."*

Does that mean that we should or we can offer two Rakah prayer after the call for the Magreb prayer but before the congregation starts and suplicate? (Ibid)

A The Holy Prophet (S.A.W.) has emphasized in a number of *ahadith* that the *maghrib* prayer should be offered as soon after the sunset as possible. On this basis the Hanafi jurists are of the view that the maghrib prayer should be offered immediately after *adhan* without any intervening prayer as nafl. However, other jurists are of the opinion that it is advisable to offer two *ra'kat* as *nafl* before the maghrib prayer. The present practice in Makkah and Madinah is based on this latter view. Now, when the gap of about ten minutes is, in any case, available for every person who prays in the haram, one can avail of this opportunity by praying two *rak'ats* before the *jama'ah*, and there is no bar against it in *Shari'ah*, even in the Hanafi school, because they prefer to avoid any *nafl* before the *maghrib* prayer only to refrain from delaying the obligatory prayer. But when the obligatory prayer is bound to be delayed, according to the current practice in *haram, it is* pointless, to avoid the *nafl* prayer. So one can offer *nafl* before *maghrib* while praying in *haram*.

25

ON FISCAL LAWS

Q *What is the deifinition of Riba (ربوا) according to the Holy Quran and Sunnah of the Holy Prophet (S.A.W.). Does it cover the simple and compound interest existing in the present day financial transactions?*

A The word, *Riba* as understood from the Holy Qur'an and Sunnah, is any extra payment received over and above the principal amount, regardless of the fact that that extra amount is significant or insignificant. Islam, therefore, considers the *Riba Haram*, in all of its forms

The *Fuqaha* have given two interpretations of the word, *Riba,: Riba-al-Nasia* (ربا النسيه) and *Riba al Fadl* (ربا لفضل).

Riba al-Nasia is defined as,

هو القرض المشووط فيه الا جل و زيادة مال على المستفر ص

Which is translated as:
"Any lending arrangement that obligates the borrower to pay a certain extra amount over and above the payment of the principal amount against the specified deferment".

Similarly, Imam Baihaqi reports the interpretation of *Riba* by Hazrat Fuzalah Ibni Ubaid (R.A):

كل قرض جر منفعة فهو من و جوه الربا

"Any lending arrangement which results in some benefits to the lender, is one of the kinds of Riba". It is important to note that the Ayahs of Holy Qur'an prohibiting interest relate to Riba al-Nasia.

"O Ye who believe, fear Allah and give up what remains of your demand for usury, if Ye are indeed believers" (al-Baqara 278).

"If Ye do it not, take notice of war from Allah and his Apostle, but if you desist, Ye shall have your

capital sum: Deal not unjustly, and Ye shall not be dealt with unjustly". (al-Baqara, 279)

At the time of revelation of the above *Ayahs*, the prevalent form of *Riba* was *Riba al-Nasia*. Therefore, the companions of the Holy Prophet (S.A.W.) understood the meaning of these *Ayahs* in terms of *Riba al-Nasia*. Thus *Riba al-Nasia* was categorically regarded *Haram* in matters of *Qarz*. (Loan transactions :QARD)

Riba al-Fadl occurs in those commodity exchange contracts where a contract provides payment of any extra quantity of the commodity.

For instance, one kilogram of wheat is exchanged for more than one kilogram of wheat, regardless of quality consideration. What matters is, that a given quantity is to be exchanged for the same quantity. In this case, the Hadith of the Prophet (S.A.W.),

الذهب بالذهب مثلا بمثل والفصة بالفضة مثل بمثل والتمر بالتمر مثلا

بمثل والبر بالبر مثلا بمثل والملح مثلا والشعير بالشعير مثلا

بمثل فمن زاد او ازدار فقد اربى، يبعوا الذهب بالغضة كيف شئتم

يدا بيد ويبعوا الشعير بالتمر كيف شئتم يدا بيد.

Sell gold by gold, silver by silver, dates by dates, wheat by wheat, salt by salt, and barley by barley like for like and equal for equal so he who made an addition or who accepted an addition, committed the sin of taking interest. But sell gold for silver as you like but hand to hand and sell barley for dates as you like but hand to hand.

Though the above *Hadith* mentions the incidence of *Riba* in six things but the *Fuqahah* have extended the application of this *Hadith* to all commodity transactions characterized by the same underlying reason. Whenever the same commodity is exchanged for more (Quantity), the *Riba al-Fadl* will arise.

In the light of above explanation, it is clear that the word 'Interest' as commonly understood in context of banking/financial pertains to the *Riba al-Nasia.* Therefore, any extra payment specified in *Qard* relating contract over and above the principal amount, falls under the definition of *Riba, al-Nasia*, irrespective of the rate/amount of the extra payment. Hence, both the Simple and the compound interest are prohibited as being *Riba al-Nasia.*

Some people, perhaps have misunderstood the meaning of the verse, *"O ye who believe, devour not usury doubled and multiplied but fear Allah that Ye may (really) prosper"* (3:130)

And have tried to argue the permissibility of the simple interest. This is totally wrong conclusion.

As a matter of fact, the Holy Qur'an wants to root out an interest mentality as appears from verse (2:279). Ibn-e-Jareer has reported the interpretation of Hazrat Qatada (R.A.) in his tafsir.

ماکان لهم من دین فجعل لهم ان یا خذوا رءوس
اموالهم ولا یزدادوا علیه شءیا

"That the Holy Qur'an permits the lender to receive the principal amount only and does not allow any addition (however small it may be)".

Q *If banking is based on interest-free transactions, what would be its basic practical shape in conformity with the Injunctions of Islam?*

A Practically, the interest-free banking system can be structured on tripartite arrangement, between depositors, banks and borrowers.

The nature of arrangement will vary in different cases as summarised below:

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BANKS AND DEPOSITORS

Depositors can be two kinds, Current Account and Saving Account holders. In the Current Account, the depositors want the bank to protect their savings for a short-time. The bank can accept such deposit (money) on *Qarz* basis. The bank will be bound to repay these funds when demanded by the depositors. In the Saving Account, the people want to invest their saving through banks. The bank can accept such deposits on the basis of *Mushaarakah* or *Mudaarabah*. For this purpose, the bank draws up contracts specifying the conditions regarding the mode of investment, distribution of profit/loss of investment, etc. such contracts become enforceable when both parties agree to it.

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BANKS AND THE BORROWERS/INVESTORS:

Three situations can arise here:

i) Consumption loans: Bank will extend interest-free loans for genuine consumption purposes.

ii) Borrowing for Investment: The banks will enter into Mudaarabah and Mushaarakah agreements with the borrowers of the fund for investment purposes. The agreement will specify the proportions according to which profits/loss will be shared between the investor and the bank. After charging the administrative expenses, the bank will distribute the profits among the share holders and depositors according to the terms of agreement.

Q *(i) Does the interest on loans floated by the Government to meet national requirements come under Riba ?*

(ii) What alternatives can be suggested for the banks in case they grant loans without interest for various requirements?

A i) Yes the Qur'anic injunctions regarding the prohibition of interest is general. The interest is prohibited both in the public and private sectors and for all types of purposes. Any excess payment made over and above the principal amount is *Riba* and is thus *Haram*. For more details

see the answer to the question (1).

ii) The Islamic Banks will finance viable investment/production projects on the basis of *Mushaarakah/* and or *Mudaarabah*. As for the financing of genuine consumption needs on the basis of *Qarz-e-Hasna* is concerned, the following considerations will have to be kept in view:

a) The amount of loan cannot exceed reasonable limits.

b) Income accruing from the collateral security like land or house will be deducted from the amount of loan.

c) If the debtor is unable to pay back the loan or he dies and there is no known way to repay his loan, then *Bait-ul-Mal* will make payment of the loan to the Bank.

Q *Can, in the light of the Injunctions of Islam, any differentiation be made between private and public banking in respect of charging interest on banking facilities or services rendered?*

A Public and private banking institutions are treated at par in respect of the Islamic injunction of prohibition of interest. No interest is allowed on any financial transaction in both public and private banks. However, the banks both in public and private sector can charge service charges to take care of administrative expenses.

Q *(i) Can the capital, according to the Injunctions of Islam, be regarded as an agent of production thus requiring return for its use?*

(ii) Does devaluation of the currency affect the payment of loans taken before such devaluation?

(iii) Can inflation causing rise in the cost/value of gold and consumer goods in terms of currency have any effect on the sum borrowed?

A i) The word capital is used in two meanings: Physical and financial. -

-Physical capital like machinery, building, etc. participating in the production process are allowed to claim their reward in the form of rental.

-Financial capital like money and near-money instruments taking part in the production process through Mudarba or Musharkah arrangement can participate in profit/or loss. However, no fixed return is admissible for the use of money capital.

ii) The question is two dimensional. The first relates to the effect of devaluation on the internal loans. In such loans, the same amount of loan will be repayable as before the devaluation. In this case, Imam Istijabi reports the consensus of Fuqahah on the point that, if there is any change in the value of currency, then the same amount of currency units will be repaid as were loaned.[1]

As far as the payment of the external loans is concerned, the devaluation will involve extra payment proportional to the rate of devaluation on such loans.

iii) The answer here is essentially related to the above answer. A given sum borrowed before inflation will be repaid in the same amount, after the inflation. The inflation tends to reduce the real burden of the loan. From this angle, it tends to favour the borrower against the lender. To protect the lender, the indexation of loan is not allowed because the indexation while protecting lender, hurts the borrowers.

Real answer to the problem of inflation is the introduction of the Islamic Economic System in totality. An important feature of this system in the monetary sector is prevalence of a relatively constant value of money.

Q *What would be the alternatives in the context of present day economic conditions to carry on domestic and foreign trade efficiently without availing of Banking facilities based on interest?*

A The scholars of Islam have suggested a number of financial instruments to facilitate internal and external trade. The most preferred are based on the principles of profit-loss sharing, like *Mudaarabah* and *Musharkah* arrangements. The other less preferred are: *bai Muajjal, Ijrara, Ijara wa iqtina and Bai-salam.* They are defined as below:

Bai Muajjal (Cost plus trade financing): The bank enters into an agreement with his client to purchase merchandise for the client and then the bank sells them to the client on the basis cost plus agreed profit margin, repayable in instalments over a specified period.

Ijara (Lease or hire): The Bank acquires machinery / equipment / building etc. for his client and charges a certain rental for their use.

Ijara wa Iqtina (Hire-Purchase): The Bank finances the purchase of equipment and the client uses them under a contract. The contract provides that the client will pay the cost of the instrument and a share in the

(1) Ibn-e-Aabideen, " Rasail V.2, p-62

net rental value of the equipment which is proportional to the outstanding shares in the total investment.

Ba'i Salam: The Bank enters into an agreement with the client for advance pruchase of merchandise and makes the payment of the agreed amount at the time of agreement.

It is important to note that above mentioned techniques are less desirable because of their resemblance to interest. Therefore, minimum use of these techniques will be made in Islamic banking.

Q *Is it possible to carry on insurance business on the transactions between two Muslim States or a Muslim and non-Muslim State?*

A Interest is not permissible on economic/financial transactions occurring between two muslim countries. Muslim countries can eliminate interest from their economy provided they make sincere and serious efforts. What is needed is to muster the public confidence. When this is achieved, the Islamic state can realize more tax revenue through extra taxes as well as through interest-free loans and voluntary contributions. Then, there may not be any need to raise interest-based loans.

However, in cases of extreme needs, a muslim country can seek interest-based loans for as small amount and for as shorter period, as possible.

The Islamic state provides for risks of poverty, sickness or any other calamity from the *Bait-ul-Mal*, *Zakat*-based social security. Insurance administered by the State take care of incidences of this nature.

Insurance business can be organized in the private sector on the basis of the principles of cooperation and mutual security. The important thing is to ensure that the elements of *Riba* and gambling do not enter into the functioning of the insurance business. This can be done by forming mutual insurance companies where policy holders contribute to the insurance fund by way of gifts. The insurance fund may be invested on the basis of *Mudaarabah* and may also be available as *Qarz-e-Hasana*[1] to the policy holders. The payment to a policy holder at the time of any calamity may be considered as a gift from the rest of the policy holders. The profits earned on the insurance fund may be distributed on the basis of the relative contributions to the fund.

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1. Loans which are free of interest, and are advanced solely in order to assist the borrower. (EDITOR)

The above-mentioned insurance scheme may be Islamically accepted as it is purged of the elements of gambling and interest.

Q *Does interest accruing on the Provident Fund or Saving Bank Account come under Riba?*

A The interest accruing on the saving bank account can be considered as Riba if the income earned by the proceeds of this account do not qualify in terms of profit-loss sharing conditions. For instance, if the return from the saving bank account is linked to the return of any single government undertaking. The reason is that the proceeds of the saving account become a part of the general government budget. However, if the return from the saving bank account are specifically earmarked, are used in a specific undertaking and the account-holders share in the profit/loss of such undertaking, then the resulting income become Islamically legitimate.

In the light of Islamic injunctions, the interest earned on the provident fund does not fall within the definition of Riba. The reason is that the employee does not own the amount of the fund., during the period in which the interest has been earned.[1] Therefore, the excess amount earned over the actual amount deposited cannot be considered *Riba.* Here, the *Fuqaha* make two suggestions: One is that the government departments have added the excess amount without the written approval of the employee. In this case, accumulating excess amount are *Riba* free. In the second case, the employee himself can ask the government to treat his fund as interest-based, then the excess amount resembles Riba.

Q *Can the payment of prize money on Prize Bond or other similar Schemes be regarded as Riba?*

A The payment of prize money on prize bond resembles gambling *(Qimar).* The income earned through prize is generated without participating in any real economic activity. Therefore, the payment on prize money is illegitimate from Islamic point of view.

Q *Would it be lawful under Islamic law to differentiate between business loans on which interest may be charged and consumption loans which should be free of interest?*

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(1) Mufti Muhammad Shafi, "provident Fund Par zakat Aur Sood Ka Mas'ala" Darul-Ishaat, Karachi, p18-20.

A The business activity will be financed through legitimate means, like Mudarbah and Musharkah and also some of the other instruments outlined in the answer to question. The consumption loan will be available as Qarz-e-Hasana through Islamic banking system.

***Q** If interest is fully abolished, what would be the inducements in an Islamic Economic System to provide incentives for saving and for economising the use of capital?*

A It is very well recognised that interest is not the primary or otherwise an important factor for the saving. The overall savings in the economy primarily depend upon the level of income. Some of the basic motivating factors for saving are:

a) meeting future exigencies,

b) providing for old age, and,

c) bequests.

Since these factors will remain even after the elimination of interest, therefore, it is most likely that the overall rate or level of saving will not be affected significantly (after the abolition of Riba from the economy).

Muslim economists have suggested a wide range of saving instruments which will be available to the potential savers in an interest free economy.[1] These instruments vary in terms of liquidity, risks and returns so as to match preferences of the savers. Apart from existing profit-based instruments like shares of joint stock company, N.I.T. Units, ICP Mutual Funds and Investors Deposit Account and Participation Term Certificate, new saving instruments compatible with Shariah, can be brought into being. Among them, *Mudarbah* bonds floated by the Government as well as by the private concerns can play important role. Similarly, a variable dividend security issued by the State Bank can serve as an important instrument. The holders of this security will participate in its profits. This will provide a low risk medium of investment for the private investors. Also, it can serve as a substitute for Government Bonds and Treasury Bills for Investment of the surplus funds of the banks and other financial institutions.

Lastly, the Government Bonds bearing no interest can be issued when the holders may enjoy tax concessions.

As regards the role of interest as a discounting factor, it is pointed

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(1) See for example, "Report of the workshop on elimination of interest from government transactions". IIIE, Pakistan, p 11-13.

out that even in the Western countries, the pure rate of interest is considered to be an inadequate measure as a discount factor. It is usually adjusted for a risk-premium.

In an Islamic Economy, the rate of return on real investment can play the role of discount factor. Practically, it can be approximated by the return on NIT Units.

Q *Can an Islamic State impose any tax on its subject other than zakat and Ushr?*

A There has been two views among the scholars about this question. The first view explicitly recognizes the sanctity of private property and therefore does not allow an Islamic state to use taxes other than *Zakat and Ushr.* The second and more dominant view is based on the recognition that an Islamic state has to perform many socio-economic functions of *Amar Bil-Maaruf wa Nahi-An-al-Munkar,* and defence. Among these functions, alleviation of poverty, economic growth, social welfare services and social justice are important. Achievement of these goals may necessitate more revenue than can be available from *Zakat* and *Ushr.* Therefore, an Islamic state can impose other taxes to be able to perform its multifarious functions.

28

THE DISPOSAL OF INTEREST MONEY

Q *Observing Muslims all over the world which, unfortunately includes those living in Muslim countries, face the problems brought before them by unwanted interest money generated in their name through channels they do not control. This happens inspite of their being careful against whatever is likely to get them involved in interestbearing activity.*

In case, interest does come into their accounts, no matter how unwanted, is there a valid way under the Shari'ah through which the identified interest amount can be disposed off?

1. Can it be taken out of the account and used to pay personal or company income tax.?

2. Can it be used to pay for Insurance dues on cars, houses, materials, businesses, stores, etc.?

3. Can interest money be given as part of his or her salary for work to a non-Muslim? Would that apply to Jews and Christians as well?

4. Can this be given to non-Muslim charities unusually solicited

through mail, door-calls and ads, such as, Blood Banks, Heart Associations, Community Service groups, Welfare Committees for the aged, sick, disabled, prisoners and similar others under disadvantage?

5. There are individuals on the streets and subways asking for help. Are they entitled to be given this money?

6. There are non-Muslims one knows live under very low income levels. Would they be preferable as recepients of this interest money?

7. Is it permissible to give this money to Muslims falling in some of the above categories?

8. Is it all right to give this money to:

a) make toilets in masajid?

b) help counter anti-Muslim propaganda as claimed and accepted by a known Muslim institution in South Africa?

S. Ahmed
New York

A As a general rule, no Muslim by his free choice should invest or deposit his money in an interest-bearing scheme or account.

If a Muslim has deposited his money in an interest-bearing account for any reason, or the interest has come to his account without his choice or intention, he should not receive the amount of interest, but should surrender it to the payer of interest.

However, in non-Muslim countries he can receive the amount of interest with a clear intention that he will not use this amount for his personal benefit. In this case it is incumbent upon him to give this amount as *Sadaqah* to the poor who do not have the *nisab* of *Zakah.* This is not the normal *Sadaqah* which a Muslim gives out of his lawful income with an intention to get reward in the Hereafter. Instead, this *Sadaqah* is meant only for disposing off an unclean and unlawful money and to relieve oneself from the burden of an illgotten gain.

But it should be remembered that this amount is unclean only for the person who has received it as interest. The poor persons who get it from him as *Sadaqah* can use this amount for their personal benefits. This amount can also be given to one's close relatives who are entitled to receive *Zakah.* Even one's adult children can receive this amount from him, if they are so poor that they can receive *Zakah.*

Keeping these rules in view, the certain answers to your questions

are as follows:

(1) No, if the amount of interest is used in paying income tax or other government taxes, it amounts to using it for personal benefit, hence it is not permissible. Some contemporary scholars of Shariah, however, have allowed it only where the banks or financial institutions are nationalized. But I am not satisfied with this proposition. It is a very grave sin to use interest-money and one should not seek such devices to use the same for his own benefit.

(2 & 3) No, all these uses are beneficial to the holder of interest-money, hence impermissible.

(4) As mentioned above, the interest-money can only be given as *Sadaqah* to those entitled to receive *Zakah* and the *Sadaqah* can only be performed through *tamlik*, i.e. by making the payee owner of the amount. So, this amount cannot be given to any welfare Scheme where it is spent in office expenditure, salaries of the staff, construction of building or purchasing things of public use without giving it in the ownership of a particular person. The interest-money therefore should be given to some poor person entitled to receive Zakah. But unlike the *Zakah* money, the amount of interest can also be given to a poor non-Muslim who does not own the value of *nisab* (threshold).[1]

(5) If they are so poor that they do not have the *nisab* of *Zakah*, the interest-money can be given to them.

(6) As mentioned earlier, the interest-money can be given to a non-Muslim also subject to the condition just mentioned in answer to question 5.

(7) Yes, if they are entitled to receive *Zakah*, they can be given the interest-money also.

(8) As mentioned in answer to question no. 4 this *Sadaqah* must be performed through *tamlik*. So, the amount cannot be used for making toilets of a musjid or in the general expenditure of a Muslim association.[2]

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1. The author is now inclined to the view that interest may also be paid for general welfare purposes, based on the writings of classical jurists. (EDITOR)
2. In the case of interest which accrues on bank deposits, the obligation to pay that interest to charity arises because the payers of that interest cannot be ascertained. If the payers are ascertained, then the interest must be paid to them. (EDITOR)

29

PARTNERSHIP ON A FIXED PROFIT

Q I have a considerable amount of money saved by me from my monthly income. I want to invest it in a lawful business which can give me some profit. One of my friends has offered me to enter into partnership with him, I shall give him the money and he will invest it in his business which is already established and run by him. He has agreed to pay me a sum of two thousancs rupees monthly as my share in the profit. Is it permissible for me to enter into partnership on these terms?

A No. A pre-determined amount of money cannot be fixed as a profit in a partnership. If you want to enter into partnership with your friend, you will have to share his risks also. In case he faces a loss, you will have to bear it in proportion to your investment. And if the joint venture brings a profit, the same may be shared on the agreed ratio.

Thus the amount of profit can only be known after the profit has been earned actually, and it cannot be fixed beforehand. However a provisional profit may be distributed before the actual accounting takes place. On this basis, the monthly payment of a particular amount may be agreed but it must always be subject to the final settlement at the end of the term. When this final settlement will take place on the basis of the actual gain or loss, all the provisional payments made earlier must be taken into account and must be adjusted according to the actual profit or loss. Without this necessary condition the said agreement of partnership will not be a valid agreement according to Shariah.

30

THE USE OF CREDIT CARDS

Q Kindly throw some light on the use of credit cards, which are floating in the market. Majority of these cards belong to professional banking institutions, such as American Express, City Gold Card etc. However, some cards are issued by companies such as Diners club etc, which are not themselves banking institutions. Please explain the ruling of Shariah about both these cards. In your reply please cover both the aspects of using credit cards, first as holders of the card, used to offset the purchase price and second, when we accept these cards as sellers.

(Muhammad Salman, Karachi)

A The use of credit card by a purchaser is allowed in Shariah, no matter whether the card is issued by a banking institution or some

other company. However, the following points must be borne in mind in this respect:

(i) The best way of using these cards is to open an account wherefrom all the amounts owing are debited by the issuing company to aviod the possibility of default which may in some cases, carry the risk of interest.

(ii) If the system of direct debit is not arranged, one must always be careful that he pays the bills within the stipulated time without fail, so that interest may not be imposed upon him.

(iii) The annual fee paid by a card-holder to the card-issuing company is not interest, rather it is a fee charged for certain services rendered by the company for the benefit of the holder. That is why it is charged irrespective of the amount actually spent by the holder.

The second question is whether it is permissible for a seller to accept credit card. This question has been a point of debate between the contemporary scholars of Islamic jurisprudence. Some of them are of the view that the amount charged by the card-issuing company to the shop-keeper is analogous to interest. They say that it is equal to discounting a bill of exchange, hence not allowed in *Shariah.*

However, some other scholars are of the opinion that it is not interest. On the contrary, it is a fee charged by the company for certain efforts undertaken by it. Firstly, the company has to do a lot of work for the benefit of the seller. Therefore, the commission charged by it is similar to the commission of a broker which is undoubtedly permissible. This commission is different from discounting a bill of exchange, because the rate of discount in a bill of exchange is always tied up with the period of its maturity, while the commission charged by the company from the merchant is not so linked. This commission is determined irrespective of the time on which the card-holder shall pay the amount to the company. Therefore, it is just like a commission charged for brokerage services.

In my personal opinion, the second view seems to be more preferable.

31

SEVERAL QUESTIONS ABOUT INSURANCE AND INTEREST

Q *(1) Is it Jaiz (permissible) to take an insurance policy from a conventional insurance company to cover our employees against liabilty in the following circumstances:*

*** Injuries that may be suffered by workers (company employees) due to accidents in the course of their work.*

****within the company's premises.*

****whilst travelling in company vehicles.*

****Injuries that may be suffered by innocent parties involved in accidents within the company's premises or in company vehicles.*

In the case of motor insurance it is a statutory requirement that vehicles owners must obtain an insurance policy to cover third party risks and the company complies with this requirement. This is the only form of insurance cover that the company now takes.

(2) Is it jaiz to take out an insurance policy to cover the anticipated medical expenses of the employees of the company?

(3) Most companies offer to meet the medical expenses of the empoyees of the company?

(4) There are circumstances in which the bank charges us interest when our current account goes into overdraft due to circumstances outside our control --- mainly due to non-realization of cheques issued to us by our debtors.

Is it jaiz for us to recover such interest from the debtor concerned? (Rafiq Qasim, Colombo)

A (1) The permissibility or otherwise of an insurance policy depends on the nature of the insurance scheme and on the terms and conditions of the transaction. But, leaving aside the mutual insurance schemes, all the insurance policies available with the traditional insurance companies run on commercial basis have an element of interest or *qimar* or both. Hence, they are not allowed in Shari'ah. So, it is not permissible to take an insurance policy from a conventional insurance company in any one of the first four situations mentioned in your question.

The prevalent third party insurance also does not conform to the rules of Shari'ah. However, being a necessary legal requirement for the use of a motor car, it is allowed on the basis of necessity only in those countries where this kind of insurance is compulsory.[1]

(2) The same reply is also applicable here.

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1. In certain countries, the state establishes a road accident fund by raising a levy from its citizens. This fund is then used to compensate persons who suffer damage as a result of the negligent driving of vehicles. Such a fund has nothing to do with insurance. (EDITOR)

(3) A company may create a mutual insurance fund of its own for this purpose. But it is not permissible in Shari'ah to take a policy from a traditional insurance company.

(4) If the interest is charged by the bank without your knowledge or without your having entered into an agreement with them for an interest---bearing transaction, you cannot be held responsible for the sin of paying interest. But of the same time, you cannot claim the amount of interest from your debtor, because in that case you will be entering into a transaction of interest deliberately.

32

ENTITLEMENT TO DEATH BENEFITS PAYABLE BY PENSION FUNDS

Q 1. *The Pensions Funds Act 1956 ("Act") regulates pension funds in South Africa.*

2. The object of the Act is to provide support for the dependants of a deceased member upon his death. The support is provided by means of lump sum payments and/or annuities.

3. A pension fund established in terms of the Act has separate juristic personality, and must comply with prescribed requirements including registration, etc.

4. A contribution to a pension fund is deducted at source from the employees salary and paid over to the fund by the employer. The employer also makes defined contributions to the fund.

5. When the employee dies, the fund in accordance with its rules but subject to the Act pays death benefits to the dependants of the deceased, normally the surviving spouse and minor children, who were dependent on the deceased for maintenance in his lifetime.

6. It is crucial to understand that in making payments of the death benefits, the trustees of the fund exercise a discretion conferred upon them in terms of the Act. They are empowered in terms of the Act to make payment of the death benefits amongst the dependants in such proportions as they deem just and equitable in the circumstances of the particular case notwithstanding any nomination made by the deceased.

Their decision is in terms of the Act subject to review by an appointed adjudicator and ultimately subject to review by the High Court (Section 37C).

7.The question therefore arises whether the death benefits awarded to the dependants of the deceased employee belong to those dependants, or whether the death benefits form part of the estate of the deceased. The Act specifically provides that those benefits will not form part of the deceased estate, and are not subject to attachment upon insolvency of a person entitled to a benefit.

8. In my humble view, the death benefits belong to the dependants of the deceased to whom they are awarded by the trustees of the pension fund in question. The reasons for this opinion is that :

8.1 The pension fund is a separate legal entity established and regulated by the Act;

8.2 The trustees in awarding the death benefits are exercising a discretion conferred upon them by the Act in accordance with its objects;

8.3 The contributions which were deducted at source did not belong to the deceased employee (in this regard, see the interesting Fatwa on Provident Funds written by your distinguished father (rahmatullahalai);

8.4 At best for the deceased, he had a claim against his employer for the amount representing the contributions deducted from his salary at source but this is not connected with the ultimate payment made by the trustees of the Pension Fund which is sourced in the Act and which regulates those payments designed for the support of the dependents only.

9.I would add that as regards the character of the death benefits, I agree with the said Fatwa of your distinguished father to the effect that they are halal.

10. Please examine the foregoing carefully and let me have your considered Fatwa on the question set out in paragraph 7 above urgently, as I have a case on hand. Besides, the issue is a common one and requires clarity.

(M. S. Omar, South Africa)

A In the light of the rules of the Pension Funds Act 1956 mentioned by you it appears that the grants given to the dependents of a deceased person from the Pension Fund are not subject to the rules of inheritance. The amounts deducted at source from the salaries of the employees are to be treated as a subscription to the Fund which no longer remain in the ownership of the deceased person and perhaps he has no right to claim it back during his life time. The principle is that only those properties of a deceased person are subject to inheritance rules which he can claim rightfully during his lifetime. Since he does not have the right to claim any amount from the fund, therefore, it is not to be taken as left-over property. The fund being a legal entity it can decide to pay this grant to whomever it deems fit from the family of the deceased. In the terminology of Islamic Fiqh this grant is a voluntary gift (Tabarru'), therefore, it is not necessary that it is to be distributed among all the legal heirs according to their prescribed shares in the inheritance.

I have given judgment in a Shariah Appeal fixed before the Shariat Appellate Bench of the Supreme Court of Pakistan with regard to the benevolent fund which is very similar to the Pensions fund you have asked about. (A copy is being sent to you by mail for your perusal and record).

9

Inheritance & Waqf

1

QUESTIONS ABOUT THE MANAGEMENT OF THE MOSQUE

Q *"I am a recent subscriber to your worthy magazine and have enjoyed every issue of your magazine since December last year. I pray that Allah will give you and your organization all strength and willingness to carry on your good work. I would be obliged if you would answer these questions for me either directly or through the medium of your magazine.*

1) Who are the people who form the Jamaah of a mosque?

Is there an area limit? Are there any other criteria to form the Jamaah?

2) There is a mosque in our city which is situated in a highly commercial area. This area was formerly highly residential and the many Muslims living there built and maintained the mosque. They also donated several properties to this mosque as waqf which gives this mosque substantial income. Can the descendants of these donors and residents of this locality still continue to be part of the Jamaah of this mosque?

3) Who is trustee of a mosque? Must he be from the Jamaath who qualifies to be a trustee? What are his duties? Can a person who does not form part of the Jamaah of a mosque be a trustee of a mosque? Can trusteeship pass on from father to son because the father has contributed substantially to the building and maintenance of the mosque?

(A. Majid M. Abdul Cader, Colombo, Sri Lanka)

A The mosque is a particular kind of *waqf* not owned by anyone. It is a property devoted for the pleasure of Allah. As soon as someone makes his property *waqf* for the purpose of building a mosque, he ceases to be its owner. However, while effecting a *waqf* one can appoint himself, or any person of his choice, as administrator of that *waqf* who takes care of its management and carries out its day-to-day affairs according to Shariah and conforming to the conditions of the *Waqf*. This administrator is called *"mutawalli"*.

If no *mutawalli* has been appointed by the founder of the *waqf*, the founder of the *waqf* shall be deemed to be the *mutawalli* during his lifetime, unless he appoints another person as such. The founder of the *waqf* can also appoint a person to take charge of the administration of the *waqf* after his death. But if no such peron has been appointed by him, the privilege of

appointing a *mutawalli* shall pass on to the Islamic State or judge authorized by the State. If the *waqf* is created in a non-muslim country, or in a muslim country where the State does not carry out the administration of the *waqf* the Muslim residents of the relevant area are entitled to appoint a *mutawalli*. It is preferable for them to select a *mutawalli* from among the descendants of the founder of the *waqf*, provided that he is qualified to work as such. However, this is not a universal principle. The Islamic state or the inhabitants of the area may appoint any other person from outside, specially when he is more capable to carry out the functions of the *waqf*.

A *mutawalli* of a mosque should always be an adult Muslim, fully capable of administering the affairs of the mosque in a trust-worthy manner using the funds with honesty for the betterment of the *waqf* only. He should also be a practicing Muslim. If he lacks any of these conditions, he is liable to be removed, even if he is the maker of the *waqf* himself or if he is one of his descendants or any other person. In this case he must be substituted by another person fully qualified for the purpose.

The administration of a waqf or a mosque can be entrusted to a committee also, in which case the committee, as a whole, shall be the *mutawalli* of the mosque having the same rights and obligations as those of an individual *mutawalli*. The members of this committee should, as far as practicable, have all the qualities mentioned above for a mutawalli of a mosque.[1]

These are the basic principles underlying the rules of the administration of a mosque. In the light of these principles the answers to your questions can be understood easily. However, a brief answer to each question is given below for your convenience:

1. Most probably you have used the word *"Jama'ah of a mosque"* in the sense of its executive committee. There is no particular number prescribed for its members, nor a particular locality from which they may be selected. The main requirement is that they should have the qualities of a *mutawalli* as mentioned above.

2. If the descendants fulfil the aforesaid requirements, they can continue to be the members of the committee. Otherwise, they should be substituted by capable persons.

3. "Trustee" is a legal term, different in connotation from the Islamic term "Mutawalli". The qualifications of a *mutawalli* have been explained earlier. If the executive committee has been formed after creating a legal trust, each member of the Board of Trustees can be regarded as a trustee, and his qualifications are the same as mentioned with reference to the member of the executive committee.

2

SOME QUESTIONS ABOUT INHERITANCE

Q *"In respect of distribution of inheritance, please respond to the following situations:*

1. A widow passes away leaving behind the following relatives:

1. A married sister and a married brother with children

2. A married daughter with children

3. A widowed daughter-in-law

4. Orphaned grand children".

2. A widow passes away leaving behind the following relatives:

1. A married daughter with children

2. Children of two deceased sisters

How will the assets (minus the liabilities) of the deceased be distributed in each of the above situations?

3. Is it incumbent upon heirs to set aside before distribution a sum to meet expenses for Hajj-e-Badal, if the deceased had not performed Hajj in his lifetime despite his physical and financial ability to do so."

A. Muslim, Dallas (Texas, U.S.A)

A The answer to this question depends on what you mean by "grand-children". There may be four situations, and the answer in each case will be different.

If the grand children are only the male children of the son of the deceased lady, the answer will be as follows:

(a) The brother and sisters and the daughter-in-law of the deceased shall not get any share in the inheritance. They are not her legal heirs in this situation.

(b) One half of her inheritance shall go to her real daughter and the remainder half shall be distributed between her male grand-children equally.

(ii) If the grand-children consist of only the female children of her

son, the distribution shall be effected in the following manner:

(a) The daughter-in-law shall not get any share.

(b) One half of the inheritance shall go to the daughter of the deceased lady.

(c) One sixth of the inheritance shall go to her grand-daughters. If they are more than one, this one sixth shall be divided between them equally.

(d) The remainder of the inheritance shall be divided into three shares, out of which two shares shall be received by the brother of the deceased lady, and one share shall go to her sister.

(iii) If the grand-children are both male and female, the distribution shall be in the following terms:

(a) The daughter-in-law, the brother and the sister of the deceased lady shall not be entitled to have any share in the inheritance.

(b) One half of the property shall vest in the daughter of the deceased lady.

(c) The other half shall be distributed between her grand-children, so that each grand son shall get double of the share of a grand - daughter. For example, it there are two grand sons and two grand - daughters, this one half of the property shall be divided into six shares, out of which two shares shall be received by each grand son and one share shall go to each grand-daughter.

(iv) If the grand children are the children of the daughter of the deceased, the answer shall be as follows:

(a) The daughter-in-law and the grand children shall not receive any share from the inheritance.

(b) The real daughter shall be entitled to get one half of the property.

(c) The remaining one half shall be divided into three shares, out of which two shares shall be received by the brother of the deceased lady and one share shall go to her sister.

It will be clear from the details given above that the manner of distribution in the Islamic Law of Inheritance is so diversified, that they differ from case to case, and even a slight change in the list of the relatives can alter the whole scheme altogether. So, when asking a question about the inheritance, the list of the relatives should always be given to the expert

with minute details in clear words, and one should not determine the shares of the inheritors on the basis of his own analogy, unless it is confirmed by some scholar familiar with the subject.

The normal course for replying a vague question about inheritance is to refer it back to the person who asked the question for further query, and to answer it only after the necessary details are obtained from him. But as you are very far from us, and the required explanation would have taken much time, we preferred to mention the rules for all the possible situations which might be imaginable within the scope of your question.

2. In this case the married daughter of the deceased lady shall get one half of the estate. Then, if she has a brother, or a son of a brother or a paternal uncle or a son of an uncle he will get the other half. But if she has none from the relations listed above, the other half shall go to all the children of her daughters, no matter whether their parents are alive or dead. The one half in this case shall be distributed among all of them in such a way that every male shall receive twice more than a female. For example, if the children of her daughters are ten, five male and five female, the one half shall be divided into fifteen shares, out of which every male shall get two shares, and every female shall receive one share.

3. If the deceased lady had made a *wassiyyah* (a will) that *Hajj-e-Badal* should be performed out of her estate, then her heirs are under an obligation to perform *Hajj-e-badal* on her behalf, provided that the amount required for *Hajj* does not exceed one third of the total property left by her.

But if the deceased lady had made no *wassiyyah* for this purpose, her successors are not under any obligation to perform *Hajj-e-Badal* for her.[1] However, the adult heirs may perform *Hajj-e-badal* from their own shares, if they so desire.

Likewise, if the amount required for *Hajj* is more than one third of the property, the adult and sane heirs of the deceased lady may either contribute from their own shares, or may choose to send somebody for *Hajj-e-badal* from a place nearer to Makkah so that one third of the property may be sufficient for *Hajj*.

1. This is the Hanafi Law. According to the other schools, the obligation constitutes a debt in the estate, which must be discharged like any other debt. (EDITOR)

10

General / Miscellaneous

1

THE ENTRY OF NON-MUSLIMS IN MAKKAH AND MADINAH

Q *"Non-muslims are not allowed to enter the city limits of Makkah Mukarramah and Madinah Munawwarah. The entry of non-muslims in the Haram limits of Makkah was banned in 9th Hijrah by a Quranic order contained in the Surah al-Bara'ah, verse 27.*

Did this order apply to the Haram of Makkah only or also to the Haram of Madinah? The Qur'an does not say so.

Imam Malik and Umar b. Abdul-Aziz etc. interpreted the verse to apply to all the masjids.

There is one hadith in which the arabian peninsula has been banned for non-muslims, but the Haram of Madinah remained open to non-muslims during the lifetime of Rasoolullah (S.A.W) and also after him Madinah was the capital of the Islamic state and the ambassadors and the foreign delegations used to visit the city.

Upto what time the city of Madinah remained open for non-muslims and since what time it was banned for them and on what authority? Does the verse of Surah al-Bara'ah include the city of Madinah?

Your reply will be a source of guidance.".

(A.S. Naviwala, Karachi)

A There are three different injunctions in relation to the entry of non-muslims into Arabia which should be understood separately, and should not be confused with each other:

The first injunction is found in the well-known hadith:

«أخرجوا المشركين من جزيرة العرب»

Expel the mushriks from the Arabian peninsula (Bukhari)

All the Muslim jurists are unanimous on the point that this *hadith* has banned the permanent citizenship of the Arabian peninsula for the mushriks but has not prohibited their entry on their temporary visit to the peninsula. They may enter the peninsula and stay there for some time but they cannot live there as its permanent citizens. In other words, the Arabian peninsula has been declared as a homeland for Muslims exclusively.

So, if the foreign visitors or envoys or delegations have been

allowed to enter the peninsula, it was, by no means, a contravention of the instruction of the *hadith* quoted above.

The second injunction relates to the entry of the non-Mulsims into the precincts of the *Haram* of Makkah. This injunction is based on Quranic verse contained in the Surah al-Bara'ah:

انما المشركون نجس فلا يقربوا المسجد

الحرام بعد عامهم هذا

The Associators are impure. So they must not come near "Almasjid al-Haram" the Holy Mosque of Makkah after this year of their pilgrimage.

But the Muslim jurists are not unanimous in the interpretation of this verse. Their different views are as follows:

1. According to the view of Imam Ahmad b. Hanbal and Imam Shafi'i this verse has banned the entry of the non-Mulsims not only to the Holy Mosque, but also to the whole precincts of *Haram* including the city of Makkah.

2. Imam Malik extends this prohibition to all the *masjids* of the world. He says that the prohibition is based on the impurity of the non-Muslims and every *masjid* in every part of the world deserves to be immune from such impurity.

3. Imam Abu Hanifah interprets the verse in a quite different way. He says that it is not the entry of the non-Muslims that has been banned by this verse, but the context of the verse suggests that the non-muslims have been forbidden from peforming *Hajj* and *Umrah*. Before the revelation of this verse, the pagans of Arabia used to perform *Hajj* and *Umrah*. Even in the 9th year after *Hijrah*, when Abu Bakr (R.A) was made the leader of the *Hajj* a large number of the pagans of Arabia performed *Hajj* with him.

On this occasion the Surah of Bara'ah was revealed and their Hajj and Umrah was totally banned with effect from the next year. The Holy Prophet (S.A.W) sent Sayyidna 'Ali (R.A) to announce this prohibition in the plain of 'Arafat where he conveyed the injunctions of the Surah al-Bara'ah to all present in that Hajj. On that occasion he did not announce that the non-muslims cannot enter the Holy Mosque after this year. Instead, he announced:

"No Associator shall perform Hajj after this year."

Keeping in view the context of the verse of Surah al-Bara'ah and this historical background, Imam Abu Hanifah has not taken the verse as a prohibition against the entry of non-muslims into the limits of *Haram* or into the Holy Mosque, but has confined the prohibition to the performance of *Hajj* or *'Umrah* only. It means that non-muslims cannot perform *Hajj* or *'Umrah*.

2

THE WAY TO CONVERT TO ISLAM

Q *"What is the procedure for a Christian to convert to Islam in order to marry a Sunni Muslim girl? Which reputable institution in Karachi arranges for such a conversion and Nikah, so that it is widely accepted in our society?"*

(Anonymous)

A It is not a correct practice to embrace Islam for the sake of marrying a Muslim girl only. Islam is a composition of certain beliefs and acts. It is a way of life. It is a matter of faith and conviction. In order to become a Muslim, it is necessary to accept all its basic teachings with one's heart and soul. If one's real purpose is only to marry a Muslim girl, and he wants to register himself as a Muslim only because he cannot marry that girl without it, while he does not have faith in the basic beliefs of Islam, he cannot be a Muslim in reality.

Therefore, one should know at the first instance that conversion to Islam is not meant for marrying Muslim girls. One should, first, study the basic Islamic beliefs and teachings, and if he is convinced that they are worth accepting, he should accept Islam for its inherent rightfulness and its intrinsic merits, and not only because he wants to marry a girl.

Now, the basic beliefs one is required to accept while entering into Islam are the following:

(i) God is One. He has neither a partner, nor a son or daughter. He is One in the true sense of the word which has no room for the concept of Trinity, or for any other form of camouflaged monotheism or a disguised polytheism.

(ii) The Holy Prophet Muhammad (S.A.W) is the Last Messenger of Allah after whom no messenger or prophet of Allah (in any sense of the word) will come.

(iii) The Holy Qur'an is the last of the divine books revealed on the Holy Prophet (S.A.W) and all its contents are true.

(iv) The life Hereafter is the eternal life one has to live after his death where he will have to face the fate of his good and evil deeds.

(v) All the teachings given by the Holy Qur'an or by the Holy Prophet (S.A.W) in absolute and unambiguous terms are true, acceptable and binding.

Once a person accepts all these fundamental beliefs as true, both verbally and with his heart, he becomes a Muslim.

Conversion to Islam has no particular procedure, like baptism etc. As soon as a person accepts the aforementioned beliefs with his heart and soul and professes them verbally, he enters the fold of Islam. It is not necessary that he seeks the mediation of a saint or priest, nor is it a prerequisite to go to a mosque or to an institution for accepting Islam. One can accept Islam on his own. However, it is advisable to go to a learned Muslim who can inform him about the basic beliefs of Islam and can teach him the concise and comprehensive words to express his acceptance to those beliefs.

Normally following sentences are used for that purpose:

اشهد ان لا اله الا الله واشهد ان محمدا عبده ورسوله

"I bear witness that there is no god but Allah, and I bear witness that Muhammad (S.A.W) is His slave and messenger."

امنت بالله وملا ءكته وكتبه ورسله واليوم الا خر والقدر خيره وشره
من الله تعاللى والبعث بعد الموت

I have believed in Allah and His Angels and His Books (as they were originally revealed on His Prophets) and in His messengers and in the Last Day and in the fact that all the good and bad destinies come from Allah and in being raised alive after death."

A further requirement for a convert Muslim is to free himself from those beliefs of his former faith or religion which are not in line with the Islamic beliefs. For example, a Christian must proclaim that he does no more believe Jesus Christ as the Son of God or a part of the Godhead. Instead, he accepts that he was a revered messenger of Allah, and was no more than a messenger, having all the human attributes.

There is a large number of Muslim institutes in Karachi which can help a non-Muslim to do the needful for accepting Islam. Here are the addresses of some of them:

1. Daurl-Uloom Korangi "K" area Karachi.

2. Jamiatul-Uloom-al-Islamiyyah, Binnori Town, Karachi.

3. Jamia Farooqi, Shah Faisal Colony, Karachi.

3

CELEBRATING EID-UL-ADHA ACCORDING TO THE HAJJ DATES IN SAUDI ARABIA

Q 1. *Is it all right for me to follow the Jamia Mosque for Eid-ul-Adha celebration although I do not agree with this decision to celebrate it with Hajj day in Saudi Arabia (i.e. next to Hajj day).*

2. What is the true significance of the details given in the attached brochure on the light of the Fiqh followed in different schools?

3. Does it agree with the decision taken by Fiqh council of Saudi Arabia which has members from all over the Muslim world.

(A Canadian Muslim)

A I have gone through the article enclosed with your letter and published in the Newsletter of the Islamic Society of North America, Vol.2 No.2. With my utmost respect to the sentiments of muslim unity expressed in the article, I am forced to say that the view explained in the article is in total disagreement with the teachings of the Holy Qur'an, the Sunnah of the Holy Prophet (S.A.W) and with the *Shari'ah* position recognised throughout the centuries. This is an unprecedented view which has never been adopted by any of the Muslim jurists during the past 14 hundred years, and it has a number of intrinsic defects and anomalies, some of which are summarized hereunder:

1. The article states that the celebration of *Eid-ul Fitr* should be tied up with the sighting of the moon in each relevant country and should not be linked with the celebration of *Eid-ul-Fitr* in Saudi Arabia. But at the same time the article argues for the celebration of *Eid-ul-Adha* according to the Saudi Calendar. In the first place, I am unable to understand how can this scheme work reasonably? Suppose, the American Muslims have declared 1st of July as 28th of Zulqa'dah according to their local sighting of the moon. But the Saudi authorities have announced the same date to be the first of Zulhijjah. If the American Muslims follow the Saudi declaration, as proposed by Isna in the said article, it will mean that the month of Zulqa'dah will end up on the 27th or 28th day, which is an absurd position on the face

of it, because an Islamic month cannot have less than 29 days, as it is expressly mentioned by the Holy Prophet (S.A.W) in the well-known ahadith. The other alternative possibility in such a situation would be to run the calendar according to the Saudi calendar irrespective of the local dates. But this option will be even worse, because it will mean that Eidul-Adha is being celebrated in America on 8th or 9th of Zulhijjah and not on the 10th. One can easily appreciate that this option is more un-acceptable than the first one, because Eid-ul-Adha can only be celebrated on 10th of Zulhijjah.

It is thus clear that the theory proposed in the article is not practicable in any way.

2. The article has laid much emphasis on the concept of the unity of Muslim Ummah which cannot be denied by anyone. But at the same time one must appreciate that the unity does not mean that the whole Muslim Ummah throughout the world should perform their acts of worship at one time and at the same time, because it is not possible at all. It is evident that when the people offer their *Fajr* prayer in Saudi Arabia, the Muslims of America offer their *'Isha* prayer of the previous day, and when the people offer their *Fajr* prayer in Los Angeles, the Muslims of Pakistan and India offer their *Maghrib* or the *'Isha* prayers of the same day. If it is made obligatory on all the Muslims of the world to offer their acts of worship at one time for the sake of unity, this type of unity can never côme into existence. It is, therefore, obvious that the difference of time while offering acts of worship can in no way disturb the concept of Muslim unity. What the concept of Muslim unity does actually mean is that all the Muslims should treat each other with brotherly sympathy and affection and should not spread disorder and dissension among them, nor should they invent new ideas foreign to the Holy Qur'an and Sunnah which may divide the Muslims and raise quarrels between them.

It is also astonishing that the article takes the celebration of *Eid-ul-Adha* in different days as against the concept of unity, while in the matter of the celebration of *Eidul Fitr* this concept of unity is not applied. It is not understandable that if the celebration of *Eid-ul-Fitr* in different days does not harm the concept of unity, how can it be said to harm the unity in the case of *Eid-ul-Adha*?

3. It is true that the *Eid-ul-Adha* falls immediately after the day of *Arafat* in Saudi Arabia, but it is not necessary that the Muslims of every country should follow the same dates in their respective areas. Hajj is, no doubt, tied up with a particular place, but the celebration of *Eid-ul-Adha* is

not confined to that place alone. It is celebrated everywhere in the world. Therefore, it cannot be held as a celebration which should in any case conform to the Saudi calendar, as suggested in the article.

4. It is admitted in article itself that the celebration of Eid-ul-Adha in other countries was never linked with its celebration in Saudi Arabia throughout the 14 centuries of our past. But, according to the author of the article, it was due to the lack of communication between the countries, because in the absence of telecommunication, the people living outside Saudi Arabia could hardly know the exact date on which the Hajj was being performed in Saudi Arabia. The author of the article argues that this phenomena has totally changed with the progress of telecommunication and other scientific resources, and it is now known to everybody on what date the Hajj is being performed in Arafat, therefore, the celebration of *Eid-ul-Adha* can easily be tied up with its celebration in Saudi Arabia.

But this argument itself is a clear admission on the part of the author to the effect that it is not obligatory according to the Holy Qur'an and Sunnah to celebrate *Eid-ul-Adha* according to the Saudi Calendar. Had it been so, the Muslims would have tried their best to know the exact date of Hajj in Saudi Arabia. It is not correct to say that it was not possible in those days for the people living outside Saudi Arabia to know the exact date of Hajj, because the date of Hajj is normally determined on the very first night of Zulhijjah, and the Hajj is performed after a period of nine days was more than sufficient to acquire the correct information about the exact date of Hajj. But no single jurist has ever stressed upon collecting such information in order to celebrate *Eid-ul-Adha* according to the dates of Saudi Arabia.

Moreover, if this argument of the author is accepted, and it is held that the real intention of the Holy Qur'an and Sunnah was to link the celebration of *Eid-ul-Adha* with the Saudi dates, as a mandatory provision for all the Muslims of the world, it will mean that the Shari'ah has stressed on a principle which was not at all practicable for more than 1300 years. Is it not against the Qur'anic declaration that Allah does not make a thing mandatory unless it is practicable for the human beings?

If the author means to say that the celebration of *Eid-ul-Adha* was not linked with the dates of Makkah in our past, but it has now become a mandatory requirement of Shari'ah, then the question arises who has abrogated the previous principle and on what basis? There is no provision in the Holy Qur'an or in the Sunnah which orders the Muslims to celebrate *Eid-ul-Adha* according to their local dates upto a particular time and to link

it with the dates of Makkah thereafter. Whoever considers this and similar other questions arising out of this unprecedented theory advanced by the author of the article can easily appreciate its fallacy.

At the end, I would like to inform you that the question of sighting of the moon in each lunar month including Zulhijjah was thoroughly discussed in the annual session of the Islamic Fiqh Academy (held in Jordan between 11th and 16th October 1986) consisting of more than 100 outstanding scholars of Shari'ah and the resolution adopted by the Academy has recommended all the Muslim countries to determine all the lunar months including Zilhijjah on one basis (and not to have one basis for Eid-ul-fitr and another for *Eid-ul-Adha*). This resolution represents the consensus of the Muslim jurists throughout the world. But the proposal given by the author of the article is totally against this consensus.

Before parting with the subject, I would like to emphasize that such unprecedented proposals can never advance the cause of Muslim unity, rather, they may create a new point of disunity and dissension among the Muslims. Before issuing such opinions as a definite *'fatwa'* they should be discussed at some reliable international forum of contemporary Muslim jurists like International Islamic Fiqh Academy of Jeddah. I would propose to refer this matter to the Academy and to wait for its answer before implementing this proposal.

4

THE MEANING OF SHAHEED

Q *The word 'Shaheed' has been frequently used in the books, newspapers and magazines for different type of people. I am sure that this word should have a specific connotation in the Islamic Terminology. I will be grateful if you please explain the true meaning of this word and the categories of persons for whom this terms may be applied in Shari'ah.*

(Abdul Sattar, Chicago)

A In fact *'Shaheed'*, is a specific term, used in the Holy Qur'an and *Sunnah*. It has certainly a specific meaning and one should be careful before applying this term to a person and you should ascertain whether he is really qualified to be called a *Shaheed*.

According to Islamic jurisprudence 'Shaheed' is of two kinds:-

1. *Shaheed* in the real sense.

2. *Shaheed* in the constructive sense.

Shaheed in the real sense is a Muslim who has been killed during *'Jihad'* or has been killed by any person unjustly. Such a person has two characteristics different from common people who die on their bed. Firstly, he should be buried without giving him ritual bath. However, the prayer of *Janazah* shall be offered on him and he shall also be given a proper *kafan.* Secondly, he will deserve a great reward in the Hereafter and it is hoped that Allah Almighty shall forgive his sins and admit him to the *Jannah.* It is also stated in some of the traditions that the body of such a person remains in the grave protected from decay and decomposition.

As compared to this kind of *'Shaheed'*, a *Shaheed* in a constructive sense is a person who has been promised by the Holy Prophet (S.A.W) to get a reward of *Shaheed* in the Hereafter but is not taken as *Shaheed* with regard to the rules of burial. It means that his dead body has to be bathed like a dead body of any other person. The Holy Prophet (S.A.W) has included in this kind of *Shaheed* a large number of persons such as a person who has died in Plague or who has died in an accident, like fire or traffic accident or has been drowned in the water or a woman who has died during the delivery of her child etc.

Allama Jalaluddin al Suyuti, a well-known scholar of Islamic disciplines, has collected all the Hadiths relating to this kind of *Shaheed* and has come to the conclusion that there are thirty categories mentioned by the Holy Prophet (S.A.W) who deserve to be called *Shaheed* in this sense. But in the normal course, the word *'Shaheed'* is applied only for the first kind. However, it is not prohibited to use the word for a person who falls in any one of the categories mentioned in the second kind.

It is evident from the above discussion that the word 'Shaheed' can only be used for a Muslim and it cannot be applied to a non-Muslim at all. Similarly, the term cannot be used for a person who has been rightly killed as a punishment for his own offence.

5

TRANSLATION OF THE HOLY QUR'AN AND RULING OF IT

Q *There are a number of books which contain the full translation of the Holy Qur'an without giving the Qur'anic text in Arabic. Please explain whether reading of such translations has the same reward as the recitation of the Arabic text of the Holy Qur'an is supposed to have. Moreover, can one touch such translation in a state of impurity and if*

somebody reads the translation of the verse of 'Sajdah' is it incumbent upon him to perform the sajdah of tilawat?

(Anonymous)

A 'Ulama have clarified that it is not allowed in Shar'iah to print or publish the translation of the Holy Qur'an without its Arabic text. It may be observed that the people of other religions have published the translation of their Holy Books without their original text and consequently the translations have spread so widely that the original text was totally ignored and it is not available today. In order to avoid such consequences it was held by the Muslim jurists that the translation of the Holy Qur'an should always be accompanied by the Arabic text of the Holy Book.

However, it is generally observed that many people in our times do not observe this important ruling of the Muslim jurists and a number of translations have been published without the original text. Such translations cannot be held as the Holy Qur'an nor can the injunctions relating to the Holy Qur'an be attributed to these translations. If somebody goes through such translations he may have the reward of studying the Holy Qur'an yet the reward specified for its recitation cannot be achieved except by reciting the original text of it. Similarly such translations published without the original texts can be touched without *wudu* and if someone reads the translation of the verse of *Sajdah* it is not incumbent upon him to perform the *Sajdah of Tilawat* because the translations of the Holy Qur'an do not carry the status of the Holy Qur'an itself and the rules regarding the Holy Qur'an cannot be attached to such translations.

6
ON JIHAD AND SHAHADAH

Q *We hear a lot of talk about Jihad these days, like the Afghanistan Jihad, the Kashmir Jihad. Then, we have the proliferation of shaheeds in our society with political parties and activist groups claiming shahadah for those dead from among their ranks. All this is very confusing. We seem to have lost the yard-stick which could help us distinguish between Jihad or bilateral hostility, shahadah or natural or crime-orientated death and straight self-ruination. Please help us with your advice.*

A The first subject requires a larger frame of discussion where we have to determine what becomes *Jihad,* and when, and what conditions are binding therein. It is difficult to cover all these aspects within the scope

of this discussion. The best course is to isolate the inquiry to a particular case of *Jihad* and try to find out whether or not it is *Jihad*. As for *Shahadah*, the rule is that one who lays down his life fighting in the way of Allah is *Shaheed*. Then, anyone killed *'zulman'* or unjustly is a *shaheed*. But, here are two Muslims fighting each other for no reason whatsoever or for the wrong reason, while one of them kills the other, that is, for no reason, then as the *hadith* states, the killer deserves Hell and so does the killed. Both must go to Hell because the one killed, had he managed to lay his hands on the killer, he would have been the one to have killed his killer.[1]

Q *Let us take the case of Jihad in Afghanistan. So many Muslims were killed there in genocide style, by the invading armies of Russia. Then, the long stiff resistance made them withdraw and in their wake came America with all sorts of game plans. They are still playing...*

A Not playing anymore. Maybe, they are all too sick with the scare of so-called 'fundamentalism' of theirs and eager enough to get rid of it.

Q *Please overlook the digression. I wanted to find out about the nature of Afghan resistance. What is Jihad?.*

A After the Russian armies invaded there, the resistance put up by the Muslims of Afghanistan will certainly be termed as *Jihad*. There is no doubt that those who laid down their lives in this valiant effort are shaheed.

7

IS BANK EMPLOYMENT PERMISSIBLE?

Q *About being emplyed in a bank. Is it correct Shari'ah-wise?*

A To begin with, employment in a bank, run on the basis of interest, is not permissible. However, a person employed in a bank is advised that he should not leave his job there immediately. He is told that he should look for some other permissible job elsewhere, and when he succeeds in getting one, he should leave the job with the bank - but, the important point here is that he should make all possible efforts he can in this direction.

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1. In other words, the deceased, if given the opportunity, would have sought to kill his killer. (EDITOR)

Q *What if he cannot find a suitable job?*

A That the chances of finding another job are slim is a pre-conceived notion because one decides in advance that the alternate job has to be of a certain status, salary, benefits in the line of the 'so-called' standards of life. If so, it may be difficult indeed. But, if one was to think a little differently, make himself willing to accept comparatively reduced benefits and then look for a job, the chances are that he will, *Insha Allah* find a suitable job.

8

ON RECITATION OF THE HOLY QUR'AN AND ITS TRANSLATION

Q *I asked a relative of mine to take to the recitation of the Qur'an, a part of it, everyday. Two weeks later when we met again, he said he had finished half of it. Later, when I found out that he had read a translation of the Qur'an and not the text, he told me that there was no use reading the text without understanding it, so he read the translation. Please guide us to the correct approach in this respect?*

A I am glad that you asked this question. This is typical of the approach to the recitation of the Holy Qur'an found in many parts of the world... especially among young people with western education...Let me begin by saying that there are three rights of the Holy Qur'an on all of us, the Muslim ummah. The highest is that one should act according to it, and acting according to it depends upon understanding it, that is, understanding its injunctions and directions. Then, if you were to look carefully, you will realize that its understanding depends upon the recitation of its words. Therefore, when the Holy Prophet graced this mortal world and the Holy Qur'an itself declared that Allah has sent him on a mission to accomplish three things:

1. يتلوا عليهم اياته

(*Recite His verses before them*)

You will not miss the clear instruction of 'yatlu' (recite) here. Then, it was said:

2. و يعلمهم الكتاب

that is, teach them the Book, explain to them its meanings. So, the recitation of the Qur'an stands established as one of the objectives of the

mission of the noble Prophet (S.A.W); and the explaining of its meanings has been identified as yet another. The reality is that both are necessary - the recitation of the Holy Qur'an as well as its teaching and learning. As for those who say why should they recite like parrots when they are not going to understand the meaning, they end up missing the very *taufiq* of understanding. This much about *Tilawah*, the recitation of the Qur'an. Teaching and learning come next. Let us keep in mind that the recitation of the Qur'an is a standing obligation, a definite and on-going objective, an *Ibadah*, act of worship in its own right, and a source of rewards and blessings. Just imagine that the Holy Prophet (S.A.W) is teaching his Companions, all of them Arabs, the meanings of Qur'anic words, of course, but, at the same time, he is telling them how to pronounce the words after him. He is teaching them the method of reciting the Qur'an. So, the method that he taught was most faithfully passed on to the generation following the Companions, the *Tabi'in*, and the generation which followed, the *Taba'Tabi'in*, and so on and so forth right upto our own time with a concern for authenticity that remains unmatched in human history. This tells us that the proper and correct recitation of the Holy Qur'an is a constant objective. It is our duty to recite the words of the Holy Qur'an correctly and nicely. It is for this reason that it has been said in *hadith* that there is a reward with Allah on every letter recited from the Holy Qur'an.

Now, if there is some one still looking for a 'rationale' for this frankly though, I do not believe in 'rationales', especially concerning the *'ahkam'* (injunctions) of Allah Ta'ala - but, for one who prefers to see only from that angle, I would say that, it is through this method that Allah Almighty has taken the responsibility of keeping the text of the Holy Qur'an preserved for all times to come.

Just imagine how comprehensively that responsibility has been fulfilled: not one part of a letter, not one dot and not one single word of the text of the Holy Qur'an has ever been changed during the last 1400 years. The phenomenon of the preservation of the Holy Qur'an is something Allah Almighty has manifested at the hands of the Muslim *ummah* itself, through its children, through its young people who do not understand the meaning of the Holy Qur'an. God forbid, if there were some one who succeeds in burning all the existing copies of the Qur'an, and eliminates the printed version from the face of the earth, even then, the whole Qur'an could be written again from the memory banks of small Muslim children. This is so because the men and women of this *ummah* held the Qur'an dear to their hearts in unmatched esteem. They revered the words of the Qur'an in the same manner as they held its learning and teaching in esteem; it was a

total effort in devotion to the recitation, learning its meanings and teachings, understanding its message and perfecting in their deeds.

So, the excuse that the words of the Qur'an can be bypassed in favour of translated readings is a product of gross misunderstanding. However, one should not stop at the simple recitation of the Qur'an. One should go further, move towards the understanding of its meanings, see for himself, through tafasir (explanations), the message Allah Almighty has given therein. The point is that recitation alone should not be taken as sufficient. Making an effort to understand its meanings and message must follow. However, the attitude of leaving out the learning of the words of the Qur'an, that is, its correct recitation, as if it was something useless, is totally wrong. They ultimately remain deprived of the very ability to understand its meaning and message.

9

RECITING THE QUR'AN WITH REASONABLE LOUDNESS WHEN PRAYING INDIVIDUALLY

Q *"Can one recite the Holy Qur'an with moderate loudness, when one is offering not in congregation (jama'ah) please elaborate the sorrect position in the context of Shari'ah".*

(Muhammad Yousuf Ghani, Karachi)

A Yes, it is permissible, rather advisable, to recite the surah *al fatihah* and other verses of the Holy Qur'an with moderate Loudness, when one is offering individually, the *salah of fajr*, *maghrib* and *Isha'* but it is not allowed to recite loudly in the *zuhr* and *'Asr* prayers. Loud recitation is also advisable in the nafl salah which is offered in the night hours, like *tahajjud* or *Awwabin.* As for the nawafil offered in daytime , it is also permissible , though not advisable.

10

SUSPICIONS CONCERNING WHETHER MEAT IS HALAL

Q *"We in North America buy our food stuff, including meat, from a Muslim's store. He tells us that the meat is duly slaughtered by a Muslim according to Shariah, but we do not know whether he is correct in his statement or not. Some people become suspicious about his statement on the ground that they themselves have not seen the animal being slaughtered and the possibility cannot be ruled out that the seller is*

claiming the meat to be halal only to attract the customers who strictly follow Shariah.

What should be a Muslim's attitude in this case?"

(Yusuf Ghani, New York)

A If a Muslim informs you about a particular meat that it is slaughtered by a Muslim in complete conformity with the Islamic injunctions, and there is no apparent reason to disbelieve him, you trust his statement and take the meat as halal. On should not indulge in baseless suspicions about a Muslim's statement. We have been directed to presume a Muslim's statement as true unless the contrary is proved.

However, it one suspects his statement on reasonable grounds, for example, he has himself seen him purchasing the meat from a non-Muslim dealer who deals in haram meat, or he has found him too careless in these matters to be relied upon, then he should not rely on his statement except after enquiry, and the meat of his store should not be purchased or used unless one is fully satisfied that it is *halal.*

11

MEANING OF HAJJ-E-AKBAR

Q *"What is the correct term "Hajj-e-Akbar"? It is generally presumed that the Hajj performed on Friday is called "Hajj-e-Akbar" and it is a superior kind of hajj as compared with the hajj performed on other days of the week. What is the correct position in Shariah?" (Ibid)*

A The term used in the Holy Quran is *"al-hajj-al-akbar"*. But it does not mean a *hajj* performed on Friday, as generally alleged by ignorant people. The Holy Quran has used this term for the hajj performed by the Muslims under the supervision of Sayyidna Abu Bakr Siddiq (R.A.) in the year 9 A.H. i.e. one year earlier to the last Hajj of the Holy Prophet (S.A.W.), and this hajj (the hajj of 9 A.H.) was not performed on Friday. Still, the Holy Quran has called it *"al-hajj-al-akbar"*. It is clear from this that this term has no reference to Friday.

The correct meaning of the term, as explained by a large number of the commentators of the Holy Quran is that the Umrah, which can be performed at any time throughout the year, was generally called *"al-hajj-Asghar"* (the minor hajj). In order to distinguish *hajj* from *Umrah* the former was named *"al-hajj-al-akbar"* (the greater hajj). Therefore, each and every hajj is *al-hajj-al-akbar,* no matter whether it is performed on Friday or on

any other day. The word *"akbar"* (greater) is used only to distinguish it from Umrah which is a minor hajj.

12

FUR GARMENTS AND THEIR USE

Q *"What is the position, in the Shariah, of using garments made of Fur derived from the hides of wild animals like fox, racons etc. Are the Muslim ladies allowed to wear such garments?"*

(Yousuf Ghani, New York)

A The use of fur products like garments, caps and shoes etc. are allowed in Shariah for men and women both. The basic principle is that the skin of every animal becomes *tahir* (pure) after it is tanned, except the skin of the pig. Thus, the skin of every animal other than the pig can be used for any lawful purpose. Hence, there is no prohibition in Shariah for wearing fur coats or other fur garments.

13

MACHINE SLAUGHTERING OF CHICKENS

Q *.1 "During your last visit to Toronto, Canada, (December, 94), we had the opportunity to see the Maple Lodge Chicken slaughter house. Based on yours and Mufti Rafi Usmani's observations, please answer the following questions:*

a) Can the Chicken slaughtered and prepared under current conditions be considered Halal?

b) If the answer to A is no or doubtful, what are the changes that may be necessary to make it acceptable as Halal?

c) Should the suggested changes be implemented, what will be the monitoring mechanism for continued acceptance?

Note:- Because of rising demand and for economic reasons, machine slaughter is now becoming widespread in many countries. How do we adapt to new technology?

A As I had explained earlier, after my visit to the Maple Lodge chicken slaughter house, the way in which slaughter of chicken is carried out is not acceptable. However, it can be brought into conformity with the Shari'ah after some minor changes. What we had observed in the

slaughter house was that the throat of the chicken was cut by a machine while a Muslim standing nearby recited *Bismillahi Allahu Akbar.*

It was observed that this recitation did not coincide with the slaughter of each and every chicken, while it is one of the fundamental requirements of Shari'ah that the Name of Allah be recited on each act of slaughtering an animal. Moreover, the machine goes on slaughtering without any break while the person who recites the name of Allah may have some break. The only solution to this problem is that instead of one person, three Muslims be employed to cut the throats of chicken manually. They can slaughter the hanging chicken, alternatively. The speed of the machine need not be slowed down, nor the production needs be reduced. Each one of these three persons will cut the throats of chickens by reciting the name of Allah. This procedure has been practised in a number of countries where the objective of mass production was never harmed or adversely affected. In the same Maple Lodge slaughter house, we had seen a number of jobs being done manually by persons standing by the railing on which the chicken pass continuously. The same method can easily be applied at the stage of slaughtering also. This will require only two or three more persons to be employed which should never be a problem for such a big firm.

You have referred to the manual slaughter vis a vis the mechanical slaughter. But I feel that the basic purpose is the mass production of *Halal* animals. If this objective is achieved, one should not insist on its being manual or mechanical. In the way I had suggested, all the process of the mechanical production will remain as it is. The only act to be done manually is the act of cutting the throat without slowing down the machine. You can see that the separation of liver and some other parts of chicken is still being done manually, while it does not in any way, slow down the process. The same method is suggested for cutting the throat also.

Q.2 According to Shari'ah, Salatul Juma should only be observed once in any Masjid. In North America, most of the Masajids were purchased vis a vis existing community's number and economic strength. In recent times, because of rising population and Islamic resurgence, many Masajid are filled over and above their maximum capacity. This is in direct violation of the prevailing Fire regulations and other property standards set by Governments.

a) Under such circumstances, can we pray more than one Juma in the same Masjid?

b) If it is permissible then should we pray in the same place, i.e. same Mehrab and Mimber?

Because of severe weather conditions and Government regulations, prayer can not be performed outside the Masjids.

A As for performing *Juma'ah* prayer more than once in the same masjid, my prima facie view is that it should be permissible subject to two conditions: First, this method should be adopted only in an extreme necessity where one *masjid* cannot accommodate all the Muslims praying there. Second, the *masjid,* in the first *jama'at* should be used to its optimum capacity in the sense that no place should remain vacant while the first *jama'at* is being performed. However, as I had mentioned earlier, this is my prima facie view. I have drafted question and answer to this effect to seek the opinion of other *Ulama.* After getting their answer, I shall send it to you in the form of a formal *Fatwa, Inshallah.*

Q.3 We have come to learn that some of the anti-biotic capsules contain small element of Pork or its derivatives. Some Muslim pharmacies are reluctant to sell such products, but they cannot avoid it. Consumers are also reluctant to buy them, but alternatives are not always available. What is the fiqh position about consumption or sale of such products?

A It is not clear whether the capsules contain an element of pork or its derivatives, or are made of gelatine manufactured out of pork, or whether the pork is contained therein for any other purpose. In any case it will be necessary before answering this question to know the exact proportion of the pork and whether the pork is transformed through some chemical process or not. Please clarify these points after which I shall be able to give a positive answer.

14

PURCHASING PROPERTY THROUGH A BANK

Q What is the Islamic ruling on the purchase of residential houses, cars and others home furnishings through Banks and Financial Institutions? The position is that such institutions provide loan by putting these things under mortgage and on this loan they charge interest at fixed rates. An alternate to this situation is that such things be acquired on monthly rental basis. But, this monthly rent generally exceeds the instalments charged by Banks as pointed out in the first case.

A The transaction mentioned above, being based on interest, is impermissible and unlawful. However, Muslims should make efforts to adopt other permissible methods in accordance with the *Shari'ah* of Islam as opposed to this interest-based transaction. For example, the Bank could itself sell things pointed out in the question on instalments. In other words, the Bank should first buy from the original seller, add an appropriate profit, then sell it onwards to the customer, and then realize its total price in instalments. (Murabahah)

15

ATTENDING PARTIES FEATURING PROHIBITED PRACTICES

Q *Not uncommon lately, are general gatherings in Western countries where Muslims are also invited. Such gatherings are mixed where liquor is also offered and consumed. If Muslims elect not to attend such functions, they are, on the one hand, alienated from the whole society while, on the other hand, they remain deprived of benefits that accrue from socialization. Is it permissible for Muslims to attend these gatherings under such circumstances?*

A Participation of Muslims in gatherings which constitute indulging in drinking, eating of pork and dancing and singing of women and men is not permissible, specially when there is no other general compulsion except the desire to be socially recognized. It is not proper for Muslims to bow down before such avenues of sin. The challenges to what Islam forbids being experienced by you give you all the more occasion to stay firm on your Faith. And should the Muslims living in non-Muslims countries - and they are not that few - could agree on not participating in such functions, the chances are that non-Muslims themselves would be left with no reasonable option but to weed out such disagreeable practices from their functions.

16

WOMEN SHAKING HANDS WITH MALE STRANGERS

Q *Muslim women living in Western countries have to shake hands with male strangers who sometimes visit their offices or schools. Similarly, there are occasions when Muslim men get into no-go situation when they have to shake hands with female strangers. In the event of a refusal to do so, the likelihood of harm coming from them is not that remote. Does the Shari'ah of Islam permit a handshake in this situation?*

A Women shaking hands with male strangers and men shaking hands with female strangers is not permissible under any circumstances. This position is fully supported by clear statements in the noble *Ahadith* and all jurists concur on this being impermissible.

17

MARRIAGE CEREMONIES IN MASAJID

Q *In Western countries, Muslim parents arrange the marriage ceremony of their sons and daughters in their Masajid because the option of renting a suitable hall is generally not available, or affordable. The ceremony is followed by music or dance programs at some places. Is it permissible to hold such programs in the Masjid?*

A As for the solemnizing of marriage, holding it in *Masajid* is a recommended practice according to the Ahadith of the Holy Prophet (S.A.W). But, singing and dancing are not permissible under any circumstances. Therefore, the holding of marriage ceremonies in *Masajid,* ceremonies which include such forbidden and immodest practices is not permissible.

18

TRAVELLING WITHOUT A LEGAL MAHRAM

Q *Many Muslim women travel to distant countries for education or employment. They neither have a legal Mahram with them nor do they have female acquaintance on the trip. What is the ruling of the Shari'ah under this situation? Is it permissible for them to travel alone?*

A In the Sahih of Muslim, there is a report from Sayyidna Abu Sa'id al Khudri (R.A) in which he says that the Holy Prophet (S.A.W) said:

> *"Let no woman travel for more than three days (being the equivalent of 48 miles in accordance with legally covered distance) unless her husband or her Mahram is with her."*

In the *hadith* quoted above, women have been clearly forbidden from travelling alone. The majority of jurists have based their arguments on this very *hadith* when they ruled that travelling without a legally recognised *Mahram* is not permissible even when intending to perform the obligation of Hajj. Compared to this, education and employment are objectives not that crucial, for Muslim women have not been obligated to fulfill such needs. This is because the Shari'ah of Islam itself placed the responsibility

of a woman's total maintenance on her father before her marriage, and on her husband after the marriage, and has not allowed women to leave the house without some urgent or pressing need. Therefore, this mode of travelling for education and employment without a *Mahram* is not permissible.

However, in the case of a woman who has neither husband nor a father, nor does she have some other relative who could support her financially, nor does she have enough funds to take care of her needs, it would, under this situation, become permissible for her to go out of the house under legal *hijab* and earn her living to the extent of her need. Now, when this purpose can be easily achieved while living in one's own country or city, there is no need to travel to a non-Muslim land. (Please see: Mughni l'ibn Qadamah, p.190, v.3)

19

A WOMAN STAYING ALONE IN A NON-MUSLIM COUNTRY

Q *Some Muslim women and young girls take up residence in non-Muslim countries either to pursue a career in modern education or to earn their living. Sometime, they would live alone and at other times, they might share a home with non-Muslim women. What is the Islamic view on Muslim women living alone or sharing a residence with non-Muslim women? Is it permissible under the Islamic religious laws?*

A As stated in our answer to Question No.5 appearing above, a Muslim woman is not permitted to travel alone without a *Mahram* to non-Muslim countries whether it be for employment or education. Similarly, it is also impermissible to stay there. But, if a woman had travelled to some non-Muslim country with her *Mahram* and had taken up residence there as a citizen but later either the *Mahram* of this woman died there or for some reason that *Mahram* travelled away from there to some other place and that woman was left all alone, then in this situation, there is no problem if this woman were to stay there alone - of course, subject to the condition that she abides by the legal *hijab* requirement while living there.

20

ON EMIGRATION TO A NON-MUSLIM COUNTRY

Q *.1 What is the ruling regarding adoption of the nationality of a non-Muslim country? Many people who adopt the nationalities of these countries, or wish to do so, insist that they do so only because they are*

persecuted in their own countries, through imprisonment, threats and intimidation or confiscation of their property etc. Others see no difference between their own countries, which though Muslim, have no Shar'iah, and those of the West. They contend that whilst both are equal in having no Islamic laws, their personal rights, property and honour are safer in their adopted country, and they will not be imprisoned or persecuted without reason.

A They issue of emigration to a non-Muslim country and permanent settlement there, is one on which the ruling would differ according to the situation, and the reasons for the emigration.

a) If a Muslim is forced by his circumstances to emigrate, e.g. he is persecuted in his country or imprisoned, or his property is confiscated etc., without his having committed any crime, and he sees no way other than to emigrate to a foreign country, then he would be permitted to do so in such a case without any *Karahat* (abhorrence) whatsoever, as long as he resolves to protect his faith, and keep himself away from the widespread evil found there.

b) Similarly, if a Muslim is forced to emigrate due to his financial situation, i.e. he cannot find the necessary means of subsistence despite extensive effort and he sees no alternative other than emigration to a non-Muslim country, then he is permitted to emigrate subject to the above conditions. Earning a livelihood through permissible means is also a duty for a Muslim, after his other *Fardh* duties, and the Shari'ah has not specified a certain place for it, Allah Ta'ala says:

هوالذى جعل لكم الا رض ذلولا فامشوا فى منا كبها و كلوا من رزقه واليه النشور

"He is the one who has made the earth manageable for you. So traverse ye through its tracts, and enjoy of the sustenance which he furnishes; And unto him is the resurrection." (Surah AlMulk, v. 15)

c) If a Muslim adopts the nationality of a non-Muslim country for the purpose of calling its people towards Islam, or to convey Islamic laws to the Muslims residing there, and to encourage them to stay firm on their faith, then this is not only permissible, but also a source of reward. Many of the *Sahabah* and *Tabi'een* settled in distant Kuffar lands for this very purpose, and this action of theirs is counted amongst their virtues and points of merit.

d) If a person has enough means of livelihood available to him in his native country to be able to live according to the (average) standard of its people, but he emigrates in order to raise his standard of living and live a life of luxury and comfort, then emigration for such purpose has at least some degree of *Karahat* in it, because such a person is throwing himself into a storm of evil, and endangering his faith and moral character without there being any necessity for it. Experience shows that the people who settle in non-Muslim countries for luxury and comfort find their religious restraint diminishing in the face of the many temptations of evil.

Therefore, it is reported in ths ahadith that one should not live with disbelievers unnecessarily.

Abu Dawood narrates from Samrah bin Jundub (R.A) that the Holy Prophet (S.A.W) said: *"He who mingles with a disbeliever and dwells with him is like him."* Abu Dawood and Tirmidhi also report that the Holy Prophet (S.A.W) said: *"I am free (i.e. I disavow myself) from every Muslim who lives with disbelievers"*. The *Sahabah* asked: *"Why, O Messenger of Allah?"* He replied: *"The fires of the two cannot co-exist."* Khattabi says in his commentary on this hadith that it has several meanings. One is that the two (a Muslim and a *Kafir)* are not equal in *Hukm* (ruling) - they both have different rules. Some scholars take this view. Others explain the meaning as being that Allah has differentiated between the lands of Islam and *Kufr* - and consequently it is not allowed for a Muslim to live amongst disbelievers in their lands, because when the *Kuffar* light their fires he will be seen as one of them. The scholars also derive from this ruling that one should not stay in the lands of the Kuffar when visiting for trade etc. (Khattabi, Ma'alim-As-Sunan, K. Jihad, 473:iii).

Abu Dawood relates from *Makhool* in his 'Maraseel' that the Prophet (S.A.W) said: "Do not leave your children amongst enemies (i.e. *Kuffar).* (Tahzeeb As-Sunan, Ibnul Qayyim, 437:iii)

For this reason, some scholars say that living in *Kafir* countries, and increasing their numbers solely for material wealth, is an action which damages ones *'Adala* (integrity). (Takmila Raddul-Mukhtar, p.101, v.1)

Finally, if a person adopts a non-Muslim nationality solely for the purpose of increasing his standing in society, and as a matter of pride, or in preference to a Muslim nationality, or in imitation of the *Kuffar,* then all such actions are *Haram* without exception, and there is no need to cite evidence for this.

Q .2 For the Muslims living in the West, bringing up their children in such an environment has its drawbacks and disadvantages, and it also has its benefits. There is a strong possibility of these children picking up habits from Christian and Jewish children with whom they play and mix. This is especially so in those cases where the parents neglect their childrens' upbringing due to their work etc., or where one or both of the parents have passed away. What would be the effect of this presumed harm on the ruling regarding emigration to a non-Muslim country? At the same time, many Muslims who live there contend that in the non-Muslim countries their children run the risk of being led away from Islam through mixing with atheist and communist groups etc., especially when in some non-Muslim countries these groups are supported by the authorities, their beliefs and doctrines are included in the educational syllabuses, the minds of common people are poisoned with them, and those who oppose them are tortured and imprisoned. In such circumstances, living in that country is more dangerous for our childrens' faith and their beliefs.

A Bringing up children in a non-Muslim country is a serious issue, and is a matter that is fraught with danger, and therefore, should be abstained from as far as possible in those cases where emigration to and residence in a non-Muslim country has been termed *Makrooh* or *Haram.*

However, in those cases where adopting a foreign nationality and living there is allowed without *Karahat* (abhorrence), since a valid reason exists, the same ruling would apply to bringing up one's children in that country. Such a person should then attend to the upbringing of his children with special attention, and the Muslims living there should create an environment in which newly arriving Muslims can properly protect and preserve their beliefs, actions and moral character.

Q .3 What is the ruling regarding the marriage of a Muslim woman to a non-Muslim man? Would it be allowed if the woman had hope of her husband accepting Islam after their marriage? Some Muslim women claim that they cannot find a suitable Muslim husband, and that their financial circumstances force them towards deviation from their faith. Would there be any possibility of permission in such a case?

Q .4 What is the ruling regarding the continuation of marital relations between a woman who has accepted Islam and her still-non-Muslim husband? The woman has hope that her husband may accept Islam if she stays with him, and she also has children from him who may digress and stray from Islam if she leaves him. Is it permissible for her to continue to live

with him as his wife in such circumstances? What would the ruling be if she did not have any hope of his accepting Islam, but he was a good husband otherwise, and she feared that if she left him she may not find a Muslim husband?

A. 3 & 4 A Muslim woman cannot marry a non-Muslim man in any circumstances. Allah Ta'ala says:

ولا تنكحوا المشركين حتى يؤمنوا، ولعبد مؤمن خير من مشرك ولو اعجبكم

"And do not marry (your women) to unbelievers until they believe: and a slave man is better than an unbeliever, even though he allures you." (Surah Al-Baqarah, v. 221) and "They are not lawful for the unbelievers, nor are they (the unbelievers) lawful (husbands) for them." (Surah Al-Mumtahanah, v. 10).

Just the hope of someone accepting Islam does not make it permissible for a Muslim woman to marry him, nor can such imagined hopes change a *Haram* into a *Halal.* Similarly, if a woman accepts Islam and her husband remains a non-Muslim, the majority of the scholars hold the view that their marriage is invalidated with her mere acceptance of Islam. Imam Abu Hanifa is of the view that the husband should be asked to accept Islam, and if he refuses, the marriage becomes invalid. If the husband then accepts Islam while the wife is in her *Iddah* (waiting period), their original marriage becomes valid once again. If he accepts Islam after the *Iddah* has expired, they must renew their marriage if they wish to live as husband and wife. This matter is agreed upon amongst all the scholars, old and new, and mere hope of someone accepting Islam cannot change the rule of the Shari'ah.

21

MINIMUM REQUIREMENT FOR ENTERING JANNAH

Q We understand that enterance to the Heaven will depend on the mercy of Allah, the Most-Merciful, and not on our deeds only. We all the time seek the mercy of the Merciful for here and for the Hereafter. Someone came to the Holy Prophet (S.A.W) asking him what he was required to do to enter into the Heaven. The Holy Prophet (S.A.W) narrated the minimum deeds he was required to do in order to enter into the Heaven. Would you be kind enough to give details of the minimum deeds. May Allah reward you for this noble work.

(M.S. Desai, Dammam)

A There are a number of Hadiths in which the Holy Prophet (S.A.W) has mentioned the requirements for entering Paradise while answering different questions asked by different Sahabah. The deeds mentioned in such Ahadith have been varying from person to person and from occasion to occasion. The reason is obvious, because Islamic injunctions relate to every walk of life and different persons are required to do different acts according to their respective environments. However, keeping all such Ahadith in view, one can summarise the issue in the following manner:

1) The most fundamental requirements for entering the Paradise are:

To have 'Iman i.e., faith in the oneness of Allah, the Prophethood of all the Messengers and in the Finality of the Prophethood of Muhammad (S.A.W) and in the injunctions brought by him, and in the Hereafter. Without having a firm faith in these one cannot expect to enter the Jannah.

2) An instant entry into the Heaven without being subjected to any kind of punishment further requires:

(a) Observance of all the obligations prescribed by the Holy Qur'an and the Sunnah of the Holy Prophet (S.A.W) which include "FARAID" such as the five prayers, Fasts of Ramadan, payment of Zakah for the persons who own Nisab, and performance of Hajj for those who can afford it. The obligation also includes "Wajibat" like 'Qurbani' etc.

(b) Abstinence from all the major sins like adultery, fornication, drinking liquor, eating pork, telling lies, accepting bribe and committing back-biting, usurping the property of others, etc, etc.

(c) If a Muslim does not fulfil the requirements mentioned in (b) above or fails to fulfil anyone of them he may be subjected to the punishment of Hell and shall not be entitled to entry into Jannah in the beginning. However, after being subjected to the punishment prescribed for several mis-deeds committed by him, he will be admitted to the Jannah by virtue of 'Iman.

This is the gist of rules mentioned in the Holy Qur'an and in the Sunnah of the Holy Prophet (S.A.W). It will be sufficient, I hope, to satisfy your inquiry.

22

THE RULING PERTAINING TO THE FOUR RAKA'AT BEFORE THE PRAYER OF 'ISHA'

Q *Some people say that there is no hadith which proves that we should pray 4 Rak'at of Sunnah before the obligatory Prayer of 'Isha'. Can you give a hadith proving the point of view that these 4 Rak'at are Sunnah before performing the 4 Rakat of Isha?*

(Husain Ahmed, London)

A It is true that there is no Hadith specifically that 4 Rak'at before the obligatory prayer of 'Isha is a Sunnah. However, there is a Hadith reported in Sahih Al-Bukhari and narrated by the Holy Companion, 'Abdullah Ibn Mughaffal (R.A) that the Holy Prophet (S.A.W) has said:

بین کل اذانین صلاۃ لمن شا .

Between every two Calls of Prayers there is a Prayer for whomsoever who wishes to perform it" (Al-Bukhari, Book X, Chapter 14, Hadith no. 624)

It is accepted by all the commentators of the Hadith that the words "Two Calls of the Prayer" mentioned in the Hadith refer to the Adhan and Iqamah. The Hadith, therefore, means that after every Adhan and before Iqamah some kind of Salah is advisable. On the basis of this Hadith the Muslim Jurists have inferred that before every obligatory Prayer it is desirable (Mustahhab) to perform some prayer which may be either Nafl or Sunnah. The Rak'at performed before Fajr and Dhuhr are Sunnah, while the prayers performed before the rest of the five prescribed prayers are held to be Nafl or Sunnah Ghayer Mu'akkadah. It will be noted in the above quoted Hadith that the number of Rak'at has not been mentioned there, meaning thereby that to perform any number of Rak'at may serve the pupose of the Hadith. However, a large number of Muslim Scholars have preferred to perform 4 Rak'at before 'Isha' prayer on the analogy of Fajr, Dhuhr and 'Asr. It may be seen in the case of these three obligatory prayers that the number of Sunnah and Nafl performed before each of them corresponds to the number of the obligatory Prayers respectively i.e. the number of Sunnah before Fajr is two which is corresponding to the 2 obligatory Rak'at of Fajr, the number of Rak'at of Sunnah performed before Dhuhr is four which corresponds to the number of 4 obligatory Rak'ats of Dhuhr, and the number of Nafl Prayer performed before 'Asr is four which

again corresponds to the number of 4 obligatory Rak'ats of 'Asr. On this analogy, the said scholars have preferred to perform 4 Rak'at before 'Isha', because it will correspond to the four obligatory Rak'at to be performed after this Nafl Prayer. It should, however, be kept in mind that the number of these 4 Rak'at should not be taken as determined by the Holy Prophet (S.A.W), nor should it be taken as a specific Sunnah. Instead, if one performs 2 Rak'at only, one should also get the reward contemplated in the Hadith of Sahih Al-Bukhari quoted above.

23

HADITH RELATED TO THE DIFFERENCES OF THE UMMAH

Q *There is a Hadith quoted very frequently by some writers and orators in which the Holy Prophet (S.A.W) is reported to have said: "The Difference of my Ummah is a Divine Mercy". Some people do not accept the authenticity of this Hadith while others maintain it to be authentic. What is the correct position in this respect? (Ibid)*

A The Hadith referred to in the question is mentioned in some of the Books of Hadith with two different versions. Firstly, it is narrated by Abdullah Ibn 'Umar (R.A) that the Holy Prophet (S.A.W) has said:

"The differences between my Ummah are a blessing".

Secondly, it is narrated on the authority of 'Abdulah Ibn "abbas (R.A) that the Holy Prophet (S.A.W) has said:

اختلاف اصحابی رحمة

"The difference between my Companions is a blessing".

The first version has been reported by some scholars of Hadith like Al-Baihaqi and Al-Maqdisi, but they have not based it on any chain of narrators. Therefore, the scholars have not taken it as an authentic hadith, the second version has been given by Al-Baihaqi in his Book Al-Madkhal and by Al-Daylami in his Book Al-Firdous. Both of them have given chain of narrators also but the authentic scholars have decided that its chain is too weak to be relied upon. (See Al-Siraj Al-Munir by Al-'Azizi v.1 p.64) It is, therefore, established that the above quoted Hadith has not been reported through any authentic source on the basis of which it can be held as reliable. Therefore, it should not be quoted as an authentic Hadith of the Holy Prophet (S.A.W).

However, the sense conveyed by it can be held as true to some extent, because the difference of opinion in the interpretation of the verses of the Holy Qur'an or the Traditions of the Holy Prophet (S.A.W) which occurred between the Companions of the Holy Prophet (S.A.W) and between the authentic scholars of Islamic jurisprudence was based on their sincere efforts to discover the truth. Therefore, the ruling of each one of them is based on the sacred source of the Holy Qur'an and the Sunnah. All such findings are possible interpretations of the Shar'iah. Therefore, in the case of a genuine collective need arising out of the changing circumstances, the view of any of the authentic scholars can be adopted to solve a common problem of the Muslim Ummah and it is in this sense that such differences between the scholars are nothing but a Divine blessing for the collective cause of the community. But it is true only in relation to the sincere differences of interpretation which have occurred between the competent scholars of the Shar'iah who are called the 'mujtahids'. It does not apply to the sectarian differences which have done nothing but to divide the Ummah between several groups and sects each one reproaching the other and waging continuous war without a sincere effort to find out the real intention of the Holy Qur'an and Sunnah. This type of differences can never be taken as a blessing, rather they are a curse for the community which should be eliminated as far as possible.

Q *I have learned from one of my relatives who has learned Arabic that most of the arguments propounded by Imam Abu Hanifa are based on the weak narrations of Ahadiths. I would like to know the correctness or otherwise of this statement."*

(A.B. Siddique, Mauritius)

A It is a totally wrong allegation that all the rulings given by Imam Abu Hanifa are based on the weak Ahadith. This baseless propaganda has been in vogue since a number of centuries and the honest Scholars of Hadith and Fiqh have vehemently refuted it on very solid grounds. Even the Scholars of other schools of Fiqh, for example, the Shafi'i School have admitted this in a number of their writings. Imam Al-Sha'rani has devoted a separate chapter in his Book 'Al-Mizaan Al-Kubra' to establish this fact - that the rulings are taken by Imam Abu Hanifa on the Holy Qur'an and authentic Ahadith and on the practice of the noble companions of the Holy Prophet (S.A.W).

Although the arguments on which the views of Imam Abu Hanifa are based have been explained by numerous scholars, yet Maulana Zafar

Ahmed 'Usmani, a well-known scholar of the Sub-Continent of Indo-Pakistan, has written a voluminous book on the very subject under the title *I'laussunan* which has been published in 20 volumes, each comprising at least 300 pages. The whole book is dedicated to explain the strength of arguments advanced by Imam Abu Hanifa and his followers. One can differ from some of the arguments given by Hanafi jurists but the same applies to other views also and it does not mean that the whole Madhab of Imam Abu Hanifa is based on weak arguments.

24

THE MEANING OF THE WORD MUJADDID

Q *"I would like to learn the meaning of the words Mujaddid and Tajdeed.*

i) How have these words been used in Hadith?

ii) Is it true that a Mujaddid will appear at the beginning of every century after Hijrah?

iii) Can there be more than one Mujaddid in a century? If yes, then, is there a pattern of geographical dispersion of Mujaddids, or time dispersion?

iv) Can Mujaddid be identified by common Muslim? By scholars? If yes how?

(Irfan Ali Hyder, Karachi)

A The word Mujaddid has been derived from a well-known hadith reported by Imam Abu Dawood in his sunan, one of the six Authentic Books of Hadith. The text of the Hadith is as follows:

ان الله يبعث لهذه الأ مة على راس كل مائة سنة
من يجدد لها دينها
(سنن ابى داود، كتاب الملاحم، حديث ٤٢٩١)

Surely, Allah will send for this ummah at the advent of every one hundred years a person (or persons) who will renovate its religion for it"

One of the narrators of this hadith is slightly doubtful about whether this hadith is reported by Sayyidna Abu Huraira as a Saying of the Holy Prophet (S.A.W.) or as his own saying, though he affirms it as a saying of the Holy Prophet (S.A.W.) "to the best of his knowledge". But even if it is

held to be a saying of Abu Hurairah himself, he could not have predicted this happening with such certainty unless he had learnt it from the Holy Prophet (S.A.W). For this reason the scholars of hadith have taken it as an authentic hadith.

The act of "renovation of the religion" mentioned in this hadith has been referred to by the word Tajdeed. It means the restoration of the original beliefs and practices after their being changed, distorted or forgotten. The hadith indicates that some circles from within the Ummah may forget the original teachings of the Holy Qur'an and Sunnah, and some foreign elements may creep into the original beliefs and practices. But the distorted version of Shariah, based on such foreign elements will not achieve the universal acceptance among the Muslims, and even if it succeeds in attracting a large number of people, Allah will send a person or a number of persons who will correct the error, restore the original beliefs and practices and explain the true intent of Shariah. This act of renovation is called Tajdeed, and those who carry out this remarkable work are named as mujaddid (renovator)

It is mentioned in the hadith that such people normally appear at the advent of a new century. The Arabic word used for the time of their appearance may also admit the possibility of their appearance at the end of a century, but the first meaning seems to be more probable in the context of the hadith. The word 'advent does not necessarily mean that they appear in the very first year of a new century. No such definite time has been given in the hadith. They can appear in the first or second decade of a century. The construction of the hadith has two possibilities with regard to the number of the renovators. There may be only one person who undertakes the task at the beginning of a century, and there may be more than one person whose combined efforts, may be termed as the efforts of tajdeed. They may work in different geographical divisions without having a formal relation between them or, possibly, without knowing each other. Still the work carried out by them can be termed as Tajdeed.

In order to avoid some dangerous misconceptions, the following points must always be kept in mind in relation to the term Mujaddid:

1. Mujaddid is not a formal designation like prophet or messenger. There is no particular authority in this world who declares him as a mujaddid. It is only through his work that he is recognised as such. This recognition also is not as certain as the recognition of a prophet. Therefore, opinions may differ about his being a mujaddid.

2. A true mujaddid does not claim to be a mujaddid with certainty, nor

does he invite others to believe in him as such.

3. Even if the majority of the Muslims is of the opinion that a particular person is a mujaddid, there is no religious obligation on the others to believe in him as a mujaddid. In other words, the recognition of a mujaddid is not a part of the necessary religious beliefs.

4. A mujaddid does not receive any authentic revelation from Allah like a prophet, nor does he make any such claim. He does not bring any new teachings regarding the religion. Rather, he tries to revive the original teachings of the Holy Qur'an and Sunnah.

5. It is not necessary that a mujaddid knows himself to be a mujaddid, let alone laying any claim to this effect.

6. A mujaddid is not infallible in his sayings and acts like a prophet. His sayings and acts normally conform to the Islamic teachings, but they are not treated like the sayings and acts of a prophet.

Keeping these points in view, one can easily understand that a mujaddid is always identified through his work. Normally the scholars of Shariah recognize him but their recognition cannot be held as certain and definite as the recognition of a prophet. There may be difference of opinion in this matter, and in fact, there has been difference in opinion about the identification of mujaddids in different centuries.

In fact, the hadith quoted above, while foretelling the appearance of mujaddids in every century, does not intend to make it compulsory to recognize such mujaddids. It is, rather, a consolation for the Muslims of the coming generations that, despite all the distortions or innovations which may creep into the Muslim society, the ummah shall not be deprived of the pious persons who shall never be influenced by such distortions, and shall follow the original teachings of the Holy Qur'an and Sunnah and invite the people to this respect. The Muslims of the coming generations are, therefore directed by this hadith to follow only those persons who dwell upon the original teachings of the Holy Qur'an and Sunnah and practices which have not been derived from these original holy resources.

25

WHAT IS 'AL-MASJID - AL - AQSA?

Q *"I am told that 'al-Masjid-al-Aqsa mentioned in Surah Bani Isra'il of the Holy Qur'an refers to a plot of land only, and there was no built mosque on that plot in the days of the Holy Prophet (S.A.W). Is this*

correct? Is the present Masjid built on the same plot? And who has built it first? (A.S. Naviwala, Karachi)

A This is not correct. What we call al-Masjid-al-Aqsa today was originally built by Sayyidna Dawood (A.S) and by Sayyidna Sulaiman (A.S.). It was in the form of a mosque even in the days of the Holy Prophet (S.A.W). Imam Baghawi reports that when the Holy Prophet (S.A.W) informed the infidels of Makkah that he has been taken by Allah to al-Masjid-al-Aqsa, they did not believe it and started asking him about the details of the building of the mosque, and the Holy Prophet (S.A.W) gave them full account of the building. They asked him about the minute details of the structure of the mosque and the Holy Prophet (S.A.W) answered all their questions correctly. (See al-Tafsir al-Mazhari v.5 p.402).

It is thus clear that al-Masjid al-Aqsa was not merely a vacant plot of land. There was a mosque built over it.

As mentioned earlier, the Masjid was orginally erected in the days of Dawood and Sulaiman (A.S). Then, it has been renovated several times. According to some reports this Masjid was destroyed when Sayyidna 'Umar (R.A) took its charge. He built it again, then Abdul-Malik ibn Marwan was the first Muslim ruler who had renovated it after Sayyidna Umar (R.A).

26

WAS SALAH OBLIGATORY ON THE PREVIOUS UMMAHS?

Q *"The five times Salah (namaz) is obligatory on the Muslims. Was it also obligatory on other ummahs? (S.A. Naviwala, Karachi)*

A It is evident from the study of the Holy Qur'an and Sunnah that the Salah (prayer) was also obligatory on all the previous prophets and their followers, but there is not authentic record available to show the exact form of prayers enjoined upon different prophets. Similarly, it cannot be said with certainty as to how many times in a day they were ordered to perform prayers. There are some reports giving some details in this respect, but they are too weak to be relied upon.

27

WHAT IS THE REWARD FOR RECITING THE QUR'AN ON A TAPE RECORDER

Q *I have been told that the recitation of the Holy Qur'an on a cassette does not carry any thawab (reward) for the listener, but it is only a source of Barakah. Could you please comment? (I.Khan LANCS,*

England)

A What you have been told is not correct in my opinion. It is true that the effects of the recitation of the Holy Quran on a cassette are a little different from those of the recitation of a real living person, but as far as the *thawab* of listening to the Holy Qur'an is concerned, there is no big difference between the two situations. There is no evidence to show that listening to the holy Qur'an on an audio cassette has no *thawab* at all.

The opinion referred to in your question may have been based on the fact that if a person listens to a verse of *sajdah* from a cassette the *sajdah* of *tilawah* does not become obligatory on him, according to the view of the majority of contemporary scholars. Perhaps it is inferred from this ruling that the recitation heard from cassette is not deemed to be *tilawa* in the strict sense, hence, it carries no reward.

But this inference, in my opinion, is not well-founded. The *Sajdah of Tilawah* becomes obligatory only when the verse is recited by a person who himself is required to offer *sajdah* after his recitation. If the person reciting the verse is not required to offer a *sajdah* how can a listener be asked to offer it? That is why a *sajdah* is not obligatory on hearing a verse of *sajdah* from a sleeping person or from a bird like a parrot. That is why the *sajdah* is not obligatory on hearing the recitation from a cassette.

But it does not mean that listening to the cassette of a *tilawah* does not carry any reward. The reward of listening to the Holy Qur'an is based on the listening of the words of the Holy Qur'an, which is undoubtedly present in the case of listening to a cassette.

Therefore, such listening cannot be devoid of *thawab* inshaallah, though it may have greater reward to listen the *tilawah'* from a real living person.

28

SOME QUESTIONS ABOUT TRADITIONAL MADRASAHS

Q *1. I would like to learn about the traditional system of Muslims as it began, and as it exists today, in our subcontinent as well as other areas of the world.*

(i) What levels of education are denoted by words like maktab, madrassa, jamiah, dar-ul uloom etc?

(ii) What language (s) is / are used as medium of instruction

(iii) What syllabi are being used? Is there a standard syllabus or a standard set of subjects used all over the Muslim world.

(iv) Are students exposed to subjects like history, geography, mathematics, literature, economics, etc. at any stage?

(v) What degrees are conferred on students who complete various levels of education?

(vi) What is the significance and meaning of the following words: Farigh ul-tehseel, aalim, mufti, maulana, maulvi, sheikh ul-hadith.

(Irfan Ali Hyder, Karachi)

A (i) The word *'Maktab'* is generally used for a small institute of religious education in which the children learn the recitation of the Holy Qur'an (which is called the *nazirah* education, or they memorize the text of the Holy Qur'an by heart. At the same time, some elementary Islamic principles are also taught in such institutes.

The word 'Madrasah' is a wider term. In early history, the word was used for an institute of higher education. This institution was generally used for all the levels of education known in the contemporary terminology as secondary, higher secondary and graduation. In some cases, even the specialized, courses were also held in the same madrasah'. Thus the term sometimes was applied for an institute of secondary level only, and sometimes for higher secondary and graduation levels also.

As for Darul-Uloom, it was originally a proper noun for a madrasah giving education at all levels, like a university. But later, it was used for every madrasah of a higher level.

'Jami'ah' is a modern term which is not found in our early history. Actually, this is an Arabic translation of the English word 'University'. When the word 'madrasah' has been adopted as a substitute for the English word 'School' which is generally restricted in modern usage for an institute of secondary, education only, some people in the traditional madrasahs' started using the word *'jami'a'* for their educational institutes in order to avoid the impression that their institute is of secondary level only. However, a large number of traditional religious institutes continue to use the traditional word 'madrasah'.

(ii) The prescribed books studied in our traditional 'madrasahs' are mostly in Arabic. Some preliminary books, however, are in Urdu or Persian also. But the teacher always delivers his lecture in the local language. In some 'madrasahs' the Arabic language has been adopted as a medium of

instruction for the lectures of the teachers also.

(iii) & (iv) The exact syllabus of the traditional 'madrasahs' differs from country to country, but the subjects of study are, by and large, the same. Their main emphasis is on the subjects of *Tafsir* (Exegesis of the Holy Qur'an), the science of *Hadith,* the *Fiqh* or Islamic jurisprudence and theology. Since these institutes are meant for those special fields of study, their main objective is to specialize the students included in the curriculum to the extent of their necessity for the intensive study of the main subjects. For example, the extensive knowledge of Arabic language, literature and criticism is a pre-requisite for a competent study of the Holy Qur'an and *Sunnah.* Therefore, all the relevant Arabic subjects are a necessary part of the curriculum. Similarly, a brief introduction of logic and philosophy is also necessary for a better understanding of Islamic theology and for the study of comparative theology. So, these subjects are also included in the curriculum. Mathematics, Geography and History are also taught to some extent. Economics, as a separate discipline is not a subject of study in these 'madrasahs'. But various economic problems are dealt with in other branches of knowledge.

(iv) The titles of the degrees conferred to the students at different levels vary from country to country. The standard, name of the final degree conferred by a full-fledged madrasah in our country is *Shahadah-al-'alimiyyh'* which is now recognised officially as an equivalent to the M.A. in Islamic Studies.

(v) *Fariqh-ul-tahseel* means a person who has obtained the final degree from a traditional 'madrasah'. The words *Alim* and *Fadil* are also used for the same person. The word *Mufti* means a person who after obtaining the final degree of *alim,* has specialized himself in the Islamic jurisprudence and is thus competent to give *Fatwa* (explaining a Shari'ah ruling in a particular situation).

The word *Molvi* was a synonym to *Alim* in the past *Moulana* is neither a degree nor a designation. It is a word of honour normally used to respect an *Alim.* Literally it means "Our master".

"Shaikul-Hadith" is a person who is appointed as a senior-most professor of the science of *Hadith* in a madrasah.

29

TAQLEED OR FOLLOWING AN IMAM ON MATTERS OF SHARIAH

Q *"There are some people who say that Taqleed, following the madhhab of one imam is haram (prohibited) in shariah. They insist that only the Quran and sunnah should be followed by a true Muslim, and it is tantamount to the shirk that some human being is being followed in the matters of Shariah. They also claim that all the madhahib formed as Hanafi, Shafi'i, Maliki and Hanbali schools are created two hundred years after the Holy Prophet (S.A.W) and they are bidah (an invention not warranted by the Quran and Sunnah). They also maintain that a muslim should seek guidance directly from the Quran and sunnah, and no intervention of any Imam is needed for the knowledge of Shariah. Please explain how far this view is correct. (Hussain Ahmad, London).*

A This view is based on certain misconceptions arising out of a superfluous treatment of the complex issues involved. The full clarification of these misconceptions requires a detailed article. However, I would try to explain the basic points as briefly as possible.

1. It is true that "obedience", in its true sense, belongs to Allah Almighty alone. He is the only One who deserves our obedience, and we are not supposed to obey any one other than Him. This is the logical requirement of the doctrine of *"Tawhid"* (belief in the Oneness of Allah). Even the obedience of the Holy Prophet (S.A.W) has been prescribed for us only because he is the Messenger of Allah who conveys to us the divine commandments. Otherwise he has no divine status deserving our obedience *per se*. We are ordered to obey and follow him only because Allah's pleasure has been epitomised in his sayings and acts.

We are, therefore, required to follow the Holy Quran, being the direct commandment of Allah, and the Sunnah of the Holy Prophet (S.A.W.) being an indirect form of the divine commandments.

But the point is that the interpretation of the Quran and Sunnah is not an easy job. It requires an intensive and extensive study of both the sacred sources of Shariah, which cannot be undertaken by every layman. If it is made obligatory on each and every muslim to consult the Holy Quran and the Sunnah in each and every problem arising before him, it will burden him with a responsibility which is almost impossible for him to discharge, because the inference of the rules Shariah from the Quran and sunnah requires a thorough knowledge of the Arabic language and all the relevant

material which a layman is not supposed to have. The only solution to this problem is that a group of persons should equip themselves with the required knowledge of Shariah, and the others should ask them about the injunctions of Shariah in their day-to-day affairs. This is exactly what the Holy Qur'an has ordained for the muslims in the following words:

فلولا نفر من كل فرقة منهم طاءفة ليتفقهوا في
الدين ولينذروا قومهم اذا رجعوا أليهم لعلهم
يحذرون.

So, a section from each group of them should go forth, so that they may acquire the knowledge and perception in the matters of religion, and so that they may warn their people when they return to them that they may be watchful.

This verse of the Holy Quran indicates in clear terms that a group of muslims should devote itself for acquiring the knowledge of Shariah, and all others should consult them in the matters of Shariah.

Now, if a person asks an authentic 'alim (knowledgeable person) about the Shariah ruling in a specific matter, and acts upon his advice, can a reasonable person accuse him of committing shirk on the ground that he has followed the advice of a human being instead of Quran and sunnah? Certainly not. The reason is obvious. He has not abandoned the obedience of Allah and His Messenger; rather, he wants nothing but to obey them. However, being ignorant of their commands, he has consulted an 'alim in order to know what he is required by Allah to do. He has not taken that *'alim* as the subject of his obedience, but he has taken him as an interpreter of the divine commandments. Nobody can blame him for committing shirk.

This is exactly what the term taqleed' means. A person who has no ability to understand the Holy Quran and Sunnah consults a muslim jurist, often termed as imam, and acts according to his interpretation of Shariah. He never deems him worthy of obedience per se, but he seeks his guidance for knowing the requirements of shariah, because he has no direct access to the Holy Quran and sunnah or does not have adequate knowledge for inferring the rules of Shariah. This behavior is called taqleed of that jurist or imam. How can it be said that taqleed is tantamount to shirk?

The qualified muslim jurists or imams have devoted their lives for

the study of the Holy Quran and sunnah and have collected the rules of Shariah; according to their respective interpretation of shariah, in an almost codified form. This collection of the Shariah rules according to the interpretation of a particular jurist is called the *'madhhab'* of that jurist. Thus the *madhhab* of an imam is not something paralell to shariah, or something alien to it; in fact it is a particular interpretation of Shariah and a collection of the major Shariah rules inferred from the Holy Quran and sunnah by some authentic jurists and arranged subject wise for the convenience of the followers of the Shariah. So, the one who follows a particular *madhhab* actually follows the Holy Quran and sunnah according to the interpretation of a particular authentic jurist whom he believes to be the most trustworthy and the most knowledgeable in matters of Shariah.

As for the difference of the *madhahib* it has emerged through the different possible interpretations of the rules mentioned in or inferred from the Holy Quran and sunnah.

In order to understand this point properly, it will be pertinent to note that the rules mentioned in the Holy Quran and sunnah are of two different types. Some rules are mentioned in these holy sources in such clear and unambiguous expressions that they permit only one interpretation, and no other interpretation is possible thereof, such as the obligation of *Salah*, *Zakah*, fasting and *Hajj*, the prohibition of pork, wine, etc. With regard to this set of rules, no difference of opinion has ever taken place. All the schools of jurists are unanimous on their interpretation, hence there is no room for *ijtihad* or *taqleed* in these matters, and because every layman can easily understand them from the Holy Quran and sunnah, no intervention of a jurist or imam is called for. But there are some rules of Shariah derived from the Holy Quran and Sunnah where either of the following different situations may arise:

1. The expression used in the Holy Sources may permit more than one interpretation. For example, while mentioning the period of 'iddah (waiting period) for the divorced women, the Holy Quran has used the following expression:

And the divorced women shall wait for three periods of Qur'

The word 'Qur' used in this verse has two meanings lexically. It covers both the period of menstruation and the period of purity (i.e. the

tuhr). Both meanings are possible in the verse and each of them has different legal consequences. The question that requires juristic effort is which of the two meanings are intended here. While answering this question, the juristic opinions may naturally differ, and have actually differed. Imam Shafi'i interprets the word 'Qur' as the period of tuhr (purity) while Imam Abu Hanifah interprets it as 'the period of menstruation.' Both of them have a number of arguments in support of their respective views, and no one interpretation can be rejected outright. It is in this way that the differences among certain madhahib have emerged.

2. Sometimes there appears some sort of contradiction between two traditions of the Holy Prophet (S.A.W.) and a jurist has to reconcile them or prefer one of them over the other. In this case also, the viewpoints of the jurists may differ from each other.

For example, there are two sets of traditions found in the books of hadith attributing different behaviors to the Holy Prophet while going for ruku in prayer. The first set of ahadith mentions that he used to raise his hands before bowing down for ruku while the other traditions mention that he did not raise his hands except in the beginning of the Salah.

The muslim jurists, while accepting that both methods are correct, have expressed different views about the question which of the two methods is more advisable. This is another cause of difference between various madhahib.

3. There are many problems or issues which have not been mentioned in the Holy Quran and Sunnah in specific or express terms. The solution to such problems is sought either through analogy or through some expressions found in the Holy Sources which have an indirect bearing on the subject. Here again the jurists may have different approaches while they infer the required solution from the Holy Quran and Sunnah.

Such are the basic causes of difference between the madhahib. This difference is in no way a defect in Shariah; rather, it is a source of dynamism and flexibility.[1]

A muslim jurist who has all the necessary qualifications for ijtihad is supposed, in the aforesaid situation, to exert the best of his efforts to discover the actual intention of the Holy Quran and Sunnah. If he does this to the best of his ability and with all his sincerity, his obligation towards Allah is discharged, and nobody can blame him for violating the Shariah, even though his view seems to be weaker when compared to the other

ones.

This is a natural and logical phenomenon certain to be found in every legal system. The enacted laws in every legal framework do not contain each and every minute detail of the possible situations. The expressions used in a statute are often open to more than one interpretation, and different courts of law, while applying such provisions to the practical situations, often disagree in the matter of their interpretation. One court explains the law in a particular way while the other court takes it in a quite different sense. Nobody ever blames any one of them for the violation of the law.

Not only this, if the former court is a High Court, all the lower courts and all the people living within the jurisdiction of that High Court are bound to follow the interpretation laid down by it even though their personal opinion does not conform to the approach of the superior court. In this case, if they follow the decision of the superior Court nobody can say that they are not following the law, or that they are holding the Court as the Sovereign authority instead of the real legislator, because, in fact, they are following the decision of the Court only as a trust-worthy interpreter of law, and not as a legislator.

Exactly in the same way, the madhab of a muslim jurist is nothing but a credible interpretation of the Shariah. Another competent jurist may disagree with this interpretation, but he can never accuse him of the violation of Shariah, nor can anyone blame the followers of that particular madhhab for following something other than Shariah, or for committing shirk by following the imam of that madhhab instead of obeying Allah and His Messenger, because, they are following the madhhab as a credible interpretation of Shariah, and not as a law-making authority.

The next question which may arise here is what a layman should do with regard to these different madhahib, and which one of them should be followed. Answer to this question is very simple. All of these madhahib being sincere and competent in their efforts to discover the true intention of Shariah, all of them are equally true, and a layman should follow the madhhab of any one of the recognized imams whom he believes to be more knowledgeable and more pious. Although the muslim jurists who have undertaken the exercise of ijtihad are many in number, yet the madhahib of the four jurists are more comprehensive well-arranged and well-preserved even today, and the muslim ummah as a whole has taken them as the most reliable interpretations of Shariah. These four madhahib

1. Which enables the Shari'ah to be applied to changing situations and needs.(EDITOR)

jurists, while interpreting the sources of Shari'ah never intend to satisfy their personal desires. They actually undertake an honest effort to discover the intention of Shari'ah and base their *madhhab* on the force of evidence, not on the search for convenience. They do not choose an interpretation from among the various ones on the basis of its suitability to their personal fancies. They choose it only because the strength of proof leads them to do so.

Now, if a layman who cannot judge between the arguments of different *madhahib* is allowed to choose any of the juristic views without going into the arguments they have advanced, he will be at liberty to select only those views which seem to him more fulfilling to his personal requirements, and this attitude will lead him to follow the 'desires' and not the 'guidance' --- a practice totally condemned by the Holy Qur'an.

For example, Imam Abu Hanifah is of the view that bleeding from any part of the body invalidates the *wudu'*, while Imam Shafi'i believes that the *wudu* is not broken by bleeding. On the other hand, Imam Shafi'i says that if a man touches a woman, his *wudu'* stands invalidates and he is bound to make a fresh *wudu'* before offering *Salah*, while Imam Abu Hanifah insists that merely touching a woman does not invalidates the *wudu.*

Now, if the policy of 'pick and choose' is allowed without any restriction, a layman can choose the Hanafi view in the matter of touching a woman and the Shafi'i view in the matter of bleeding. Consequently, he will deem his *wudu'* valid even when he has combined both the situations, while in that case his *wudu'* stands invalidates according to both Hanafi and Shafi'i views.

Similarly, a traveller, according to the Shafi'i view, can combine the two prayers of *Zuhr* and *'Asr.* But at the same time, if a traveller makes up his mind to stay in a town for four days, he is no more regarded a traveller in the Shafi'i view, hence, he cannot avail of the concession of *qasr,* nor of combining two prayers. On the other hand, combining two prayers in one time is not allowed in the Hanafi school, even when one is on journey. The only concession available for him is that of *qasr.* But the period of travel, according to Hanafi view is fourteen days, and a person shall continue to perform *qasr* until he resolves to stay in a town for at least fourteen days.

Consequently a traveller who has entered a city to stay there for five days cannot combine two prayers, neither according to Imam Shafi'i because by staying for five days he cannot use the concession, nor according to Imam Abu Hanifah, because combining two prayers is not at all allowed according to him.

But the policy of 'pick and choose' often leads some people to adopt the Shafi'i view in the matter of combining two prayers and the Hanafi view in the matter of the period of journey.

It is evident in these examples that the selection of different views in different cases is not based on the force of arguments underlying them but on the facility provided by each. Obviously this practice is tantamount to 'following the desires' which is totally prohibited by the Holy Qur'an.

If such an attitude is allowed, it will render the Shari'ah a plaything in the hands of the ignorant, and no rule of the Shari'ah will remain immune from distortion. That is why the policy of 'pick and choose' has been condemned by all the renowned scholars of Shari'ah. Imam Ibn Taymiyyah, the famous *muhaddib* and jurist, says in his *'Fatawa'*:

> *"Some people follow at one time an imam who holds the marriage invalid, and at another time they follow a jurist who holds it valid. They do so only to serve their individual purpose and satisfy their desires. Such a practice is impermissible according to the consensus of all the imams."*

He further elaborates the point by several examples when he says:

> *"For example if a person wants to pre-empt a sale he adopts the view of those who give the right of pre-emption to a contingent neighbour, but if they are the seller of a property, they refuse to accept the right of pre-emption for the neighbour of the seller (on the basis of Shafi'i view) . . . and if the relevant person claims that he did not know before (that Imam Shafi'i does not give the right of pre-emption to the neighbour) and has come to know it only then, and he wants to follow that view as from today, he will not be allowed to do so, because such a practice opens the door for playing with the rules of Shari'ah, and paves the path for deciding the halal and haram in accordance with one's desires." (Fatawa Ibn Taymiyyah Syrian ed. 2:285,286)*

That was the basic cause for the policy adopted by the later jurists who made it necessary for the common people to adopt a particular *madhhab* in its totality. If one prefers the *madhhab* of Imam Abu Hanifah, he should adopt it in all matters and with all its details, and if he prefers

another *madhhab*, he should adopt it in full in the same way and he should not 'pick and choose' between different views for his individual benefit.

The consequence of the correctness of all the *madhahib*, is that one can elect to follow any one of them, but once he adopts a particular *madhhab*, he should not follow another *madhhab* in a particular matter in order to satisfy his personal choice based on his desire, not on the force of argument.

Thus the policy of allegiance to a particular *madhhab* was a preventive measure adopted by the jurists to prevent anarchy in the matter of Shari'ah. But obviously, this policy is meant for the people who cannot carry out *ijtihad* themselves, or cannot evaluate the arguments advanced by every *madhhab* in support of their respective views. Such people have no option but to follow a particular *madhhab* as a credible interpretation of Shari'ah.

But the people equipped with necessary qualifications of *ijtihad* need not follow a particular *madhhab*. They can derive the rules of Shari'ah directly from their original sources. Similarly, the persons who are not fully qualified for the exercise of *ijtihad*, yet they are so well-versed in the Islamic disciplines that they can evaluate the different juristic views on pure academic grounds without being motivated by their personal desires are never forbidden from preferring one *madhhab* over the other in a particular matter. There is a large number of Hanafi jurists who, despite their allegiance to Imam Abu Hanifah, have adopted the view of some other jurist in several juristic issues. Still, they are called 'Hanafi'.

This partial departure from the view of Imam Abu Hanifah was based on either of the following grounds: sometimes they, after an honest and comprehensive study of the relevant material came to the conclusion that the view of some other Imam is more forceful. Sometimes, they found that the view of Imam Abu Hanifah is based on pure analogy, but an authentic Hadith expressly contradicts that view and it is most likely that the hadith was not conveyed to Imam Abu Hanifah, otherwise he would not have adopted a view against it.

In some other cases, the jurists felt that it is the requirement of the collective expedience of the Ummah to act upon the view of some other imam, which is an equally possible interpretation of Shari'ah, and they adopted it not in pursuance of their personal desires, but to meet the collective needs of the Ummah and in view of the changed circumstances prevailing in their time.

These examples are more than enough to show that the followers of a particular *madhhab* have never taken it as a substitute of Shari'ah or as its sole version to the exclusion of every other *madhhab*: In fact, they have never given a juristic *madhhab* a higher place than it actually deserved within the framework of Shari'ah.

Before parting with this question, I would like to clarify another point which is extremely important in this context: some people having no systematic knowledge of Islamic disciplines often become deluded by their superficial information based on self-study, and that too, in most cases, through translations of the Holy Qur'an and *ahadith*. By virtue of this kind of cursory study, they presume themselves to be the masters of the Islamic learning, and start criticizing the former Muslim jurists. This attitude is totally wrong and devoid of any justification. The inference of juristic rules from the Holy Qur'an and Sunnah is a very meticulous exercise which cannot be carried out on the basis of a superficial study. While studying a particular juristic subject one has to collect all the relevant material from the Holy Qur'an and from the *ahadith* found in different chapters and different books, and has to undertake a combined study of this scattered material. He has to examine the veracity of the relevant ahadith in the light of the well settled principles of the science of hadith. He has to discover the historical background of the relevant verses and traditions. In short, he has to resolve a number of complicated issues involved. All this exercise requires very intensive and extensive knowledge which is seldom found in the contemporary *'Ulama*, whoare specialists themselves in the subject, let alone the common people who have no direct access to the original sources of Shari'ah.

The upshot of the above discussion is that all the four *madhahib* being based on solid grounds, it is permissible for a competent *Hanafi 'alim* to adopt another juristic view, if he has the required knowledge and ability to go into the merits of each *madhhab* on the basis of adequate academic research without pursuing his personal desires. But the people who do not fulfill these conditions should not dare to do so, because it can lead to a dangerous state of anarchy in the matter of Shari'ah.

31

TRANSLATION OF THE HOLY QUR'AN AND RULING OF IT

Q There are a number of books which contain the full translation of the Holy Qur'an without giving the Qur'anic text in Arabic. Please explain whether reading of such translations has the same reward as the

recitation of the Arabic text of the Holy Qur'an is supposed to have. Moreover, can one touch such translation in a state of impurity and if somebody reads the translation of the verse of 'Sajdah' is it incumbent upon him to perform the sajdah of tilawat?

(Anonymous)

A 'Ulama have clarified that it is not allowed in Shar'iah to print or publish the translation of the Holy Qur'an without its Arabic text. It may be observed that the people of other religions have allowed to publish the translation of their Holy Books without their original text and consequently the translations have spread so widely that the original text was totally ignored and it is not available today. In order to avoid such consequences it was held by the Muslim jurists that the translation of the Holy Qur'an should always be accompanied by the Arabic text of the Holy Book.

However, it is generally observed that many people in our times do not observe this important ruling of the Muslim jurists and a number of translations have been published without the original text. Such translations cannot be held as the Holy Qur'an nor can the injunctions relating to the Holy Qur'an be attributed to these translations. If somebody goes through such translations he may have the reward of studying the Holy Qur'an yet the reward specified for its recitation cannot be achieved except by reciting the original text of it. Similarly such translations published without the original texts can be held in hands without *wudu* and if someone reads the translation of the verse of *Sajdah* it is not incumbent upon him to perform the *Sajdah of Tilawat* because the translations of the Holy Qur'an do not carry the status of the Holy Qur'an itself and the rules regarding the Holy QUr'an cannot be attached to such translations.

32

DOES ISLAM PERMIT DONATIONS FROM NON-MUSLIMS FOR AN ISLAMIC CAUSE

Q *(1) Is it permissibleto accept donations from non muslim individuals or organizations, for an islamic cause like building a mosque, madrassa or similar other projects? We have been offered handsome donations for a proposed mosque cum Islamic centre in our vicinity by the non-muslims in our area. The point of concern is that the source of income of the proposed non muslim donors could not be vouched for its being in accordance with the tenets of Islam. Please advise us in the light of*

Shariah.

A Donations for a mosque or an Islamic centre can be accepted from a non-muslim individual or organization with the condition that such donations are not, in any manner, harmful to the interests of the muslims. If, for example, there is an apprehension that the donors will try to interfere with the management of the mosque or the Islamic centre or the donation will be detrimental to the esteem of the muslims, then, such donations should not be accepted.

So far as the question of the source of income of the donor is concerned, it is not necessary to carry out a detailed enquiry in this respect. However, if the source of income on the face of it, is proved to be *haram*, the donation should not be accepted.

Q *(2) Can one accept a donation for the above cause from a muslim whose source of income is absolutely illegitimate (haram) and at the same time one can verify it? (Dr. Zakaullah, New York)*

A As mentioned in the case of a non-muslim donor, one is not required to enquire into the source of income of a donor, and unless it is evidently clear that the source is *haram*, one can presume that the money is *halal*. However, if it is absolutely clear, even without an enquiry, that the donation has come out of a haram source, then it is not allowed to accept such a donation.

33

THE METHOD OF SPELLING THE NAME OF PROPHET (S.A.W)

Q *"It is a common observation in correspondence and documents that people write "Mohd" instead of writing the full name "Muhammad". Ironically, this maltreatment is only with this name. I have never seen any person writing any other name in a short form please comment on this habit in the light of Shariah.*

(Muhammad Yousuf Ghani, Karachi)

A It is absolutely a wrong practice. No such abbreviation should be allowed to the blessed name of the Holy Prophet (S.A.W). Likewise, it is also noticed that some people abbreviate the words of salah and they write صلعم or in an abbreviated form. This is also incorrect. The words of *salah* should be written in full.

Introduction to the Author

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The Author is:

- A brilliant, leading and outstanding Muslim jurist and scholar;
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- Judge of the Shariat Appellate Bench of the Supreme Court of Pakistan;
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